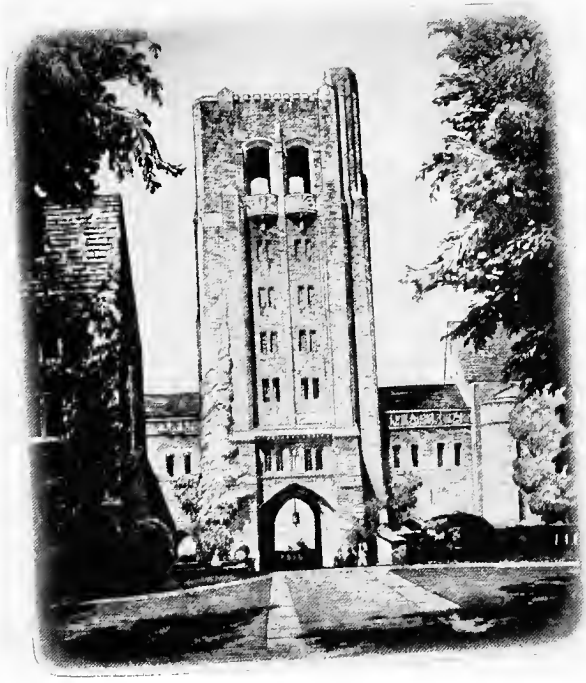

THE EVOLUTION OF LAW

A HISTORICAL REVIEW

Based upon the Author's Commentaries on the Evolution of Law

Following the Thread from the Earliest Known History of Mankind to the Present Era and Times

---

Observations by the late Senator John J. Ingalls on Law Government and Biography.

FOURTH EDITION

By

HENRY W. SCOTT

Of the New York Bar

Author of "Scott's Probate Law and Practice," "Distinguished American Lawyers," "Scott's Commentaries on the Evolution of Law," "Commentaries on Executive Authority," "Commentaries on the Laws of Nations," "Scott on Hoffman's Legal Outlines," "Review of Uniform Marriage and Divorce," etc., etc.

New York
THE BORDEN PRESS PUBLISHING CO.
1908

Nation Press, New York

PUBLISHERS' ANNOUNCEMENT

PUBLISHERS' ANNOUNCEMENT.

It is with much satisfaction that the Publishers of this volume present it to the public with the statement that in the existence of this House, which covers a period of nearly fifty years, our records fail to disclose a work which we feel so well deserves the favorable consideration of those for whom it is intended.

A Historical Review of the Evolution of Law from the earliest known period of human government! What a vast field! What a reflection for the mind! And how well the great scope is covered! The task of doing it, and so briefly, never once losing the thread, is indeed the work of a master. The absence of tedious notes and references is such a relief. The affirmative terseness of the text stamps every statement as authority, based as it is upon the most careful and exhaustive research and the most painstaking labor.

The work seems exactly suited to this busy age, and at the same time places within the reach of every reader of the English language a knowledge of the progress and evolution of the laws of all the centuries of the past and brings him within the very portals of the institutions of to-day which govern and protect him.

It is in our judgment an educational work, brief as it seems at a glance, that should challenge the attention of every reader in all countries where laws are observed and respected.

It will be our pleasure to announce the publication of several of the forthcoming works of the Author in the near future.

THE BORDEN PRESS PUBLISHING CO.,
86 Park Place, New York City, N. Y.

PREFACE

PREFACE

We present in this volume a historical review of the Evolution of Law, covering the subject as fully as can be done, maintaining the brevity we deem essential to meet the requirements of those who desire to take only general note of the subject.

We invite especial attention to the Introduction, which covers many points of interest not usual to the formal introductions to other works; also to the observations by the late Senator John J. Ingalls on Law Government and Biography, first published as the Introduction to the author's "Distinguished American Lawyers" in 1891, but which we give prominence in this review on account of its application and literary excellence.

We have not seen fit to chapter the text, but have arranged sub-heads, and classified them successively in a Table of Contents. We also have made up a complete index which covers the subjects of the Introduction as well as of the text. The List of Authorities is also arranged alphabetically so that the reader need have no difficulty in finding anything contained in this volume.

Other points in explanation of the work will be found in the Introduction.

HENRY W. SCOTT.

New York, 1908.

DEDICATION

TO THE MEMORY OF

GROVER CLEVELAND

Distinguished citizen, lawyer and statesman, twice President of the United States of America, whose firm, unchangeable and lofty devotion to the principles of democratic government and whose steadfast and unyielding adherence to truth, honor and virtue will ever impress his greatness in private and public life, upon all mankind, and the institutions of all succeeding generations; to whom the author is indebted for signal public honors and a valued friendship enduring for more than twenty years, until his death, this volume is

REVERENTLY DEDICATED

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AUTHOR'S INTRODUCTION

AUTHOR'S INTRODUCTION.

The author desires to impress distinctly upon the mind of the reader the importance of careful attention to this introduction. It is not merely embraced as a formality in making up a complete volume, but is rendered quite necessary, for the reason that the observations contained in this historical review of the Evolution of Law are so closely confined to the text as to render it somewhat difficult to include these suggestions therein.

The material from which a connected narrative must be gathered is scattered throughout the entire range of legal and general literature, sacred, profane, and civil history, and much valuable material is also practically buried in isolated articles treating of but a single feature, and published in magazines, journals, and other periodicals in different parts of the world, and inaccessible except as a result of a thorough and exhaustive research.

Some twenty years ago the author determined upon a thorough course of research and study into the history and development of the law, from its most primitive beginning and from the most ancient civilization; and in doing so, was met with

two difficulties: first, the multitude of books, articles, papers, etc., from which the subject might be studied, and secondly, the inaccessibility of many of them. These difficulties, however, were overcome by long and patient effort in finding and purchasing everything not readily accessible.

About this time, which was in the year 1889, the author was fortunate in engaging as private secretary a very brilliant and learned scholar, who was a personal and literary friend of the late James G. Blaine, and who had, through the good offices of that great man, become attached to the army. But this position had become so distasteful to him after a few years that it resulted in his giving it up and engaging in the pursuit of literature, with varying degrees of success and failure.

Additional interest was then inspired in the investigation and study, extending over a period of several years of unremitting labor, resulting in the preparation of a manuscript of commentaries on the Evolution of Law, which was the foundation of the commentaries hereinafter referred to and to which the author has added the labor of succeeding years.

During this period these labors also included a thorough search made through the British Museum in London, where much valuable material was found, to be obtained nowhere else in the world. The author's "Distinguished American Lawyers" being ready for the press about this time, the pub-

lishers of that work, knowing of the proposed commentaries, desired to embrace, in the edition of the former, an essay or historical review of them, which it was thought would be quite as interesting as the lives of the great advocates themselves. To accomplish this end, which was praiseworthy enough, the historical review, substantially as contained in this volume, was prepared, but upon later consideration it was found that it would swell the volume to a size too large for convenience, so there the matter ended.

It had been our intention, and we have been repeatedly urged, to publish the review in some form or other for all these years, but it was neglected, as such things are, when surrounded by a degree of uncertainty as to the best method of doing so, and especially when depending upon the movements of a busy practitioner.

Again, in the year 1899, the manuscript was mislaid, and only recently recovered. Upon recovery, steps were at once taken for the publication, not only of the review, after suitable revision, but also of the Commentaries. The latter, together with all of the author's writing, essays, etc., on the subject up to the present time, can be promised early in the year 1909 under the title of "Scott's Commentaries on the Evolution of Law," consisting of two volumes, fully revised, thus adding to the entire manuscript, when published, the distinction of deeper study and the work of maturer years.

And it can be vouchsafed that if the text shall fail in its composition to meet the expectations of a standard of excellence commensurate with the importance of the subject, the completeness and comprehensiveness of the work and the faithfulness and the accuracy of the contents may be relied upon.

It may be stated also that the author has been repeatedly advised by publishers that such a work would be unprofitable, yet we feel that, notwithstanding the personal expense its publication will entail, particularly the initial expense, when considering all the time, labor and money expended, and the rare collection of facts and material hitherto practically unknown to all save the oldest and ripest scholars, that a failure to give it to the legal literature of the world and to the profession would not only border upon culpability, but would be almost, if not wholly, unpardonable.

If by such a commentary or treatise, the history and evolution of law, connectedly brought from man's primitive estate across the abyss of the ages through the barbaric wars, through ignorance and superstition, serfdom and slavery, the battles between Church and State, the dark ages, the days of chivalry and feudalism, the rise and fall of empires and nations, to the Christian era, on to the humane laws of our own times, based upon liberty, justice and equality, be well received and appreciated by the profession and the thoughtfulness and

forbearance of enlightened mankind, we shall feel that our labors will have been well rewarded and that our efforts will not have been in vain.

Following these suggestions or explanations, a few observations on the range of the subject, including a list of authorities reasonably obtainable, may be useful in this connection. In considering the origin and nature of man note should be made of the essential differences between man and other animals, emphasizing the principle of the triple nature of the soul.

The fact that man is a social as well as a gregarious animal, that he is endowed with reason, will power and a thirst for knowledge, that his moral responsibility for his acts leads him to distinguish between vice and virtue and exercise an idea of reward and punishment; that he has a right to life and the fruits of bodily and mental labor, to reputation and to freedom, unrestrained, except by the laws of nature and general utility, all taken together, make society, government, religion and knowledge essential to his well-being and happiness. Under this head man's rights are either perfect or imperfect, natural or adventitious, alienable or inalienable.

In the primitive aggregations of mankind we can trace back to the family, with its relations of husband to wife, parent to child and master to servant, as the unit of archaic society, with the father as the head or chief. The family was the basis.

The motives that led mankind to the formation of civil government were primarily the social principle, permitting men to live in a community peacefully and for the benefit of all, and the attachment of the sexes with its resulting progeny. These, however, were blighted in the outset by impotency and fear, laying the foundation for the superstitious belief that the god or gods ordered a certain man or men to represent them and rule the people according to divine command, thus placing the great masses into the hands of the rulers and at their mercy.

Governments were first established for the greater safety and welfare of the governed, not for the benefit of the rulers. The original right to govern was supposed to have arisen from divine command or the consent of the governed. Subsequently the idea of divine command dwindled away, and the right to govern was founded on the consent of the governed, or their involuntary subjection by tyrants; or on the idea that the royal descendant inherited all the rights and powers of his predecessor; or on expediency in choosing a leader in times of danger to the community as a whole, or on the common choice by the people of a man possessing all the kingly virtues.

Proving the last named custom, history often tells us of revolutions, when the people arose in a body and deposed the tyrannical sovereign, and placed the right to govern in the hands of a man

who would not abuse his powers, and rule in the interests and for the welfare of the masses.

The dissolution of government does not reduce man to a state of nature, but merely to conditions of a civil union, with the right of sovereignty in the hands of the members, and giving up of certain natural rights, such as the avenging of an injury, or the right to certain liberties and other things influenced by law and order and the general happiness of society. Then comes the necessity of jurisdiction and law as a direct result of civil union.

Thus, upon the establishment of law, and following it down after it has taken tangible form, we come across its champions, such as Demosthenes, Aristotle, Cicero, Justinian, Bracton, Finch, Grotius, Puffendorf, Sanderson, Daws, Hooker, Hobbes, Montesquieu, Burlamaqui, Dagge and Blackstone and many others.

The internal properties of the law then arise, such as a rule of action, sanction, obligation and permission, and the external attributes, embracing the philosophy of legislation, the outline of codes and the rules of legislation.

The question also arises as to the laws of nature as applied to man in all stages, such as the differences between the laws of nature and the Divine Positive Law, and the theories advanced as to the manner in which man became acquainted with the laws of nature; whether he obtained them from precept, by inspiration from human reason alone,

from sentiment alone, from reason and sentiment united, from the laws of man alone, or from the consent of mankind.

In this study we find that the laws of nature relate to man's duty to himself and his duty to his fellow creatures. Man's duty to himself consists of the cultivation of his moral and religious nature, the acquisition of all useful knowledge, the preservation of the health of his body and mind, the honest procurement of property, and the pursuit of salutary pleasures. Man's duties to his fellow creatures are either absolute and common to all people, or hypothetical, arising from the establishment of society, government, law and order.

Then comes the distinction of political law from civil, and the difference between political and civil states; the nature and objects of a constitution affected by the physical conditions of the governed, and the necessity for laws varying with the great and radical changes in the genius of the people; various divisions of the forms of government treated of by the ancients, such as Socrates, Plato, his pupil, Aristotle, Polybius, Charondas, Zaleucus and Cicero, and the opinions of some of them as to the ideal forms of government.

Machiavel, Milton, Hume, Montesquieu, Sidney, Harrington, Confucius, Bolingbroke, the Authors of the Federalist, Bentham and Napoleon, Locke, Frederick II. of Prussia, Rousseau, Maine and

other modern champions have contributed each in his turn to the advancement of political science.

Then we have the classification of all conceivable forms of civil government into the Pure and Simple, comprising Theocracy, Patriarchy, Simple Monarchy, Simple Aristocracy, Simple Democracy; the Pure and Mixed, comprising a Monarchy combined with an Aristocracy, Monarchy combined with Democracy, Aristocracy combined with Democracy, Monarchy combined with Aristocracy and Democracy; Quasi Mixed Republic or Democracy, in which the various principles rather than the governments are combined; the Corrupt and Simple, comprising a Despotism or Tyranny, an Oligarchy or Ochlocracy; and the Corrupt and Mixed, comprising either of the foregoing governments singly or in a confederacy.

Then we have Feudalism as known to the continent of Europe: First, the occupation of the conquered land by barbarians, their allotment among the victors; allodial property; beneficia and feuds; how Counts and Dukes made their offices hereditary; the prevalence of feudal over allodial land; and rise of tenures; the characteristics of feuds, as homage, fealty, investiture, reliefs, primer seisin, fine for alienation, attornment, escheat, aids, wardships, and marriage; the rise of the landed aristocracy, orders and ranks of subjects, and the privileges exercised by lords within their fiefs, as the coinage of money, private war, taxation, legisla-

tion, and judicial jurisdiction; surnames and armorial bearings; the progression of the feudal system toward its modern form and aspect, and the gradual substitution of royal for territorial jurisdiction, noting the growth of the Commons, the progress of taxation, and the preservation of the Roman Law as it appears in countries of Europe to-day; and the feudal system in England and its influence on the jurisprudence of that country and of the United States.

If space permitted we would gladly extend these observations and give to our readers a complete review of the "Legal Outlines," by Professor Hoffman, for many years Professor of Law of the University of Maryland, who gave to the legal literature of England and America, in the year 1836, a published volume consisting of ten lectures, which, though almost entirely argumentative, contain much valuable original information, but only as it comes out in his arguments. Had Professor Hoffman also given to us a treatise on the subject, the profession to-day would owe him a debt it could never repay, for his learning was great and his wisdom profound.

A review of the theoretical laws of Plato and others of ancient times would be instructive as well as interesting, but space forbids. However, we present in conclusion a few thoughts of Professor Hoffman on Plato, together with a list of Plato's works as arranged by him. These views so fully coincide

with our own, and are so splendidly expressed, that we may be excused for inserting them for the benefit of those to whom they may appeal.

We quote: "As the works of Plato are voluminous and in this country seldom to be found except in the hands of veteran students, it may be well to explain of what they consist before we proceed to speak of his opinions. An enumeration of all the works of this eminent philosopher, with their names and extent, may invite the student, through curiosity or a more worthy motive, to a further acquaintance with them than what may be gleaned from the sketch here given.

"The whole of Plato's works, then, are contained in fifty-five dialogues and twelve epistles. Hermodorus, however, in his collection makes only thirty-five dialogues, but gives thirteen epistles. The reason of this variance may be that there is some doubt whether some of the dialogues be not the production of one or more of his distinguished pupils, as is certainly the fact with the dialogue called 'Epinomis.' Each of the dialogues is designated by a short and pithy name, such as 'De Politico,' 'De Republica,' 'De Legibus.' His works may be divided into four classes, viz.: Physical, Logical, Ethical and Political. The treatise 'De Republica' is not properly a dialogue, as the whole is recited by Socrates; but he details the opinions of the other supposed interlocutors.

"As the writings of Plato may now be studied by

those who are not deeply versed in the Greek and Latin languages, they having recently assumed an English garb, any one may now speak of them with a familiarity which a few only could formerly have possessed. And, indeed, were scholars in those languages more frequent, and even much addicted to their perusal, still they would not be justified in disregarding the laborious researches of such translators as Taylor and Sydenham, who devoted much time and deep investigation to attain a thorough knowledge of their author. Nine of the dialogues were translated by Sydenham, and the remainder, together with the epistles, by Taylor; and the whole, with learned annotations, were published in 1803 in five quarto volumes.

"The works of Plato being often referred to on subjects of natural and political jurisprudence and ethicks, we shall present to the student the names of all of them, together with the volume and page in which they may be found in the translations of Taylor and Sydenham. We would previously observe, however, if it be not sinning against all authority, that after a pretty careful examination of his works, mainly, we confess, through the aid furnished us by Taylor and others, we are strongly inclined to the opinion that the wisdom, learning and acumen of the divine Plato have been greatly overrated.

"It appears to us that there is much of wordy jargon, inexplicable subtlety, and occult and use-

less learning; often combined, indeed, with bold and striking thoughts, close and deep reasoning, and numerous apothegms and aphorisms of truth and wisdom. The prevailing character, however, of his works is mysticism, symbolical and incomprehensible physicks, logical cant, acroamatick speculations, and still more acroamatick words and terms, perhaps at no time fully comprehended by his disciples, or by his readers in after ages, and possibly as little understood by himself.

"His imagination was certainly brilliant, and his eloquence of the highest order; but that his wisdom was not proof against the affectation and pedantry of his age is abundantly manifest throughout his writings, in the various fantastical notions and sublime nothings which a philosopher of the present age would utterly repudiate.

"On the whole, therefore, we cannot doubt that the age of Platonism is forever past, and that the remark of Dionysius on another occasion may be correctly applied to much of the philosophy of this greatly distinguished man, viz.: that many of the notions are *'Verba otiosorum senum ad imperitos juvenes.'* And though the wise and learned and aged of many nations and times have sought instruction in the pages of the divine Plato, much of this must be ascribed to circumstances which have perhaps entirely passed away, and can never recur.

"These we need not enumerate, as they will readily suggest themselves to the mind of a student

tolerably acquainted with the progress of human knowledge, from the days of Plato to the dark ages, and from the revival of literature to the eighteenth century, when the present philosophy of matter and mind became fully established. But, parting with what may be considered too digressive, we shall now present the promised list of Plato's writings."

PLATO'S WRITINGS GIVEN BY PROFESSOR HOFFMAN, AS CONTAINED IN FIVE VOLUMES TRANSLATED INTO ENGLISH BY TAYLOR AND SYDENHAM, WITH ANNOTATIONS, ETC.:

DIALOGUES.

VOLUME FIRST.

No.		Pages.
1.	"The First Alcibiades".....	9 to 98
2 to 10.	"The Republic"—Ten Books or Dialogues	99 to 478

VOLUME SECOND.

11 to 23.	"The Laws"—Twelve Dialogues	1 to 384
24.	"Epinomis, or the Philosopher"..	385 to 414

This dialogue is supposed by Diogenes Laertius to be the production of one of his disciples.

25. "The Timæus"..... 414 to 575
26. "The Critias, or Atlanticus"..... 575 to 593

VOLUME THIRD.

27. "The Parminedes"..... 1 to 201
28. "The Sophista"..... 202 to 283
29. "The Phædrus"..... 283 to 373
30. "The Greater Hippias"..... 373 to 429
31. "The Banquet"..... 429 to 531

VOLUME FOURTH.

32. "The Thæteus"..... 1 to 99
33. "The Politicus"..... 100 to 175
34. "The Minos"..... 175 to 193
35. "The Apology of Socrates"..... 193 to 229
36. "The Crito"..... 229 to 245
37. "The Phædo"..... 245 to 343
38. "The Gorgias"..... 343 to 461
39. "The Philebus"..... 461 to 571
40. "The Second Alcibiades"..... 571 to 575

VOLUME FIFTH.

41. "Euthyphra" ..... 1 to 27
42. "The Meno" ..... 28 to 101

43. "Protagoras" ..... 101 to 157
44. "The Theages"..... 157 to 179
45. "The Laches" ..... 179 to 211
46. "The Lyris" ..... 211 to 239
47. "The Charmides"..... 239 to 269
48. "The Lesser Hippias"..... 269 to 309
49. "The Euthydemus" ..... 309 to 355
50. "The Hipparchus" ..... 355 to 371
51. "The Rivals" ..... 371 to 408
52. "Menexenus" ..... 408 to 431
53. "Clitopho" ..... 431 to 439
54. "The Io" ..... 439 to 489
55. "The Cratylus"..... 489 to 575

The "Epistles" are twelve in number, and are as follows:

Nos. 1, 2, 3, "Epistles to Dionysius." (These are by some supposed to have been written by Dion, one of his disciples.)

No. 4, Plato to Dion; 5, Dion to Perdiccas; 6, Plato to Hermias and others; 7, Plato to the Kindred of Dion; 8, Plato to the Familiars of Dion; 9, Plato to Archytas; 10, Plato to Aristodorus; 11, Plato to Laodamus; 12, Plato to Archytas.

In the same lecture the learned Professor continues at length on Plato's works in a most able and exhaustive manner, and adds the views of many other eminent legislators and philosophers of ancient times; but as interesting as a pursuit of these phases of the side lights of the times might

be, we bring this feature of the subject to a close, repeating our promise to give our full and complete Commentaries on the Evolution of Law to legal literature during the early part of the coming year.

HENRY W. SCOTT.

New York City, July, 1908.

LIST OF AUTHORITIES

LIST OF AUTHORITIES.

The following is a list of authorities referred to in the Introduction, reasonably accessible, particularly in the larger cities, or which may be purchased by the exercise of some patience:

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OBSERVATIONS BY THE LATE SENATOR JOHN J. INGALLS ON LAW, GOVERNMENT AND BIOGRAPHY

OBSERVATIONS BY THE LATE SENATOR JOHN J. INGALLS ON LAW, GOVERNMENT AND BIOGRAPHY.

The paper following was written by the late Senator Ingalls at the request of the author as a personal tribute to the students and younger members of the American bar. It was embraced in the work of the author entitled "Distinguished American Lawyers" as the Introduction to that book, which was published by Charles L. Webster & Company, of New York, in 1891, and from that found its way into many places in literature, and is regarded as one of the classic productions of his pen. Deeming it not inappropriate, referring as it does to legal biography and the profession of law, we give it prominence in this volume.

The author acknowledges a debt of gratitude to the late Senator Ingalls for inestimable and manifold kindnesses rendered to him in his youth, and is grateful for a friendship lasting until the great man's death. The solicitude of Senator Ingalls for young men of ambition and studious habits was practically unlimited, and it can be said with perfect truth that not one of them ever appealed to him in vain for inspiration, for hope and for encouragement in his struggles for the goal.

A suggestion of his to young men was that life is too short to consume it in continually settling up old scores, though he in his early life had not observed these wise words of later years. Another was that one ought not to be too modest in the recognition of one's own capabilities. As an illustration, when speaking of his own eloquence and power of drawing great throngs when a speech was to be delivered by him in the Senate, the great man often said, to the author, "I refer to this as to a fact, and with the same formality and indifference as I would to the size of the shoe I wear, or the length of my trouser leg."

His private life was stainless, his nature pure and wholesome as the fresh-blown rose, and he left to posterity a monument to commemorate his genius, oratory and industry, which will not perish from the earth as long as it is exalting to nurture aspiration for honorable station and receive the just rewards for the achievements of men. If it be true, as science avers, that every vibration of the atmosphere is carried onward forever, then somewhere to-day in the infinite regions of space may be heard the expressions of the many beautiful thoughts to which he gave eloquent utterance in his life, still rivalling in rhythmic measure the exquisite harmony of the celestial spheres!

LAW, GOVERNMENT AND BIOGRAPHY.

By John J. Ingalls.

As there is no study so interesting to humanity as human nature, and no subject so attractive to mankind as man, so the departments of literature that have been most sedulously cultivated in ancient and modern times have been history and biography.

History records the birth, growth and death, the struggles, the intercourse and the destinies of nations. Biography narrates the lives of the individuals of which nations are composed. One treats of peoples and races; the other of persons. The first is general, and chronicles great political movements, wars, disputed successions, and the ambitions of dynasties which modify governments and change the boundaries of kingdoms; the latter is special and is confined to the personal events, incidents, traits, qualities and characteristics of its subjects.

Biography preceded history, and ancient literature is rich in examples. The Book of Job, the earliest known production of the human intellect, and the most interesting, because it shows that man, in the infancy of the race, was troubled by the same problems that perplex us now, is a biography. The Old Testament abounds in these compositions, of which the lives of the patriarchs and the story of Ruth are familiar instances. The myth-

ologies of Greece and Rome are biographies, and the literature of those nations has given no more valuable treasure to the world than Plutarch's lives and the Sophists by Philostratus.

The demand for individual biographies having become so insatiable in modern times, they have grown beyond the dimensions of any catalogue, and the annual flood continues unabated; some philosophical, others historical, descriptive and critical.

Much is insignificant and worthless, but among the melancholy waste of trite and insipid platitudes there are occasional exceptions, so rich and picturesque in thought, style, treatment and scope, and so important on account of the relationship of the subject to the age that they survive in immortal vigor and appeal with unimpaired zest to every succeeding generation.

Such are Boswell's Life of Johnson; Sterling, by Carlyle; Goethe, by Lewes; Froude's Cæsar, and last but most important, Otto Trevelyan's Charles James Fox, which, in composition, spirit, construction and discernment, stand easily foremost, with the dignity of history, the charm of biography, and the intense passion of romance and tragedy.

It was of such books that Dr. Johnson said: "No species of writing seems more worthy of cultivation than biography, since none can more certainly enchain the heart by irresistible interest, or more widely diffuse instruction to every diversity of condition."

This volume does not aspire to the dignity of Tacitus, nor to the analytical dissertation of Condorcet. It is a collection of sketches of the lives of "Distinguished American Lawyers," many of whom have been prominent in public life as well as at the bar, and is intended specially for the young who are struggling in obscurity against the obstacles of poverty, and who require the stimulus presented by the contemplation of the careers of such as have encountered similar difficulties and achieved renown in every field of human effort. To these it will be an inspiration and a prophecy.

There is no prescription for success. To him that hath shall be given, and from him that hath not shall be taken away even that which he seemeth to have. Two shall be grinding at the mill, and one shall be taken and the other left. A man may apparently deserve fame and fortune and obtain neither; or he may deserve neither and obtain both.

Destiny is not logical nor just. It seems sometimes as if there must be a peculiar assemblage of faculties that commands success, so that those disqualified and having neither mental nor moral equipment acquire without effort the prizes of the world—riches, station and felicity—while those of whom success might have been predicted are doomed to penury and obscurity.

Many brilliant youths fail to fulfill their early promise and do not justify the prophecies of great-

ness because they loiter by the way, while their dull competitors press sturdily onward, resisting the temptation to "pluck every flower and repose in every shade." Others do not succeed for want of opportunity.

In a domain of law there should be no such thing as luck, and every man should receive the just reward of his labors and go to his own place. But any philosophy of life that rejects chance as a factor is fatally defective. It is usual for those who seek to exalt human destiny to assert that great men make the environment of their greatness.

This may sometimes be true, but the rule is otherwise. Grant, Sherman and Sheridan had little to do with bringing on the Civil War. They would have prevented it if they could, but had it not occurred their lives would probably have been spent in the inglorious inactivity of camps and garrisons on the frontier, or the obscurity of humble private avocations. But for the French Revolution, in which Napoleon was too young to participate, the great commander might have died a subaltern of artillery or a soldier of fortune on other fields.

No man can be a leader unless there is a crisis, and no orator can be eloquent unless there is an occasion. He may charm by rhetoric, attitude and gesture, but Demosthenes, Chatham, Burke and Webster are immortal because they interpreted the

purposes and gave voice to the passions of epochs. Sometimes the man does not appear with the emergency.

No person bears the same relation to our Civil War, the most important period of our history, as Samuel Adams and Patrick Henry sustain to the American Revolution, or Gladstone to the cause of Home Rule in Ireland. The only conspicuous utterance that rises spontaneously to the memory is the little speech of Lincoln at Gettysburg, which was read from three foolscap pages in less than ten minutes, while Everett declaimed two hours from the same pavilion, and his words are forgotten.

Opportunity comes once to all, but the capacity to recognize and grasp it is an endowment given to few, and neglected, it seldom presents itself again. The reader of these narratives, therefore, will search them in vain for any precepts that will instruct him how to inevitably become eloquent, or rich, or renowned. Of the journey to these goals there is no itinerary.

Along the voyage of life there are beacons and buoys upon reefs and headlands to invite and warn, but no pilot can unerringly steer into these fortunate havens. Every navigator upon this sea is a Columbus. He sets sail for an undiscovered continent. He has ship, cargo, chart and compass, but no underwriter can issue a policy of insurance against loss and wreck.

But the perusal of these pages will be of inesti-

mable value in teaching the ingenuous and ambitious youth of America that though there is no indispensable formula for success, so there are no obstacles which undaunted resolution, industry and courage cannot surmount. Humble birth, poverty and privation are rather hostages than foes to fortune. Of those recorded in this volume, indeed, of all the leaders in letters, arts and arms in modern times, few have been born to the purple. Natal silver spoons have not been frequent in mouths that have charmed, taught or commanded mankind in riper years.

The presidents, legislators, judges, inventors and merchant princes of 1920 will not be the gilded youths of 1890, leading lives of sensual indulgence and faring sumptuously every day, but the sons of farmers, artisans and laborers, who are striving to enter in at the strait gate against discouragements that seem sometimes insuperable. No one reaches the full stature of his powers except under the stress and pressure of necessity, and he who would have wings must tempt the abyss.

The careers herein depicted illustrate vividly the opportunities afforded to young men of character, energy and ambition in the United States. The removal of hereditary bars, the abolition of caste, privilege, authority and prerogative have prevented here the social stratification which exists under other governments, and leaves the individual free to follow the dictates and preferences of his own fac-

ulties, and to act in any direction that his own genius may impel. The profession of law in other lands is aristocratic and exclusive in its limitations, and difficult of access; but here the tendency to fill its ranks by constant reinforcements increases from year to year.

Much flippant and puerile, but harmless, criticism has been directed at the legal profession and its practitioners by the self-confessed humorists of the press, based upon alleged torpor of conscience and moral flexibility. But the lawyers of every age have been the recognized leaders of enlightened public opinion, the champions of human rights and the defenders of civil and religious liberty. In periods of danger and tumult, when established institutions are threatened by false instructions or by appeals to violence, the thoughtful and conservative masses of the people have always turned to the bar for advice, counsel and direction.

Of the law it can be said, as of no other profession, that a knowledge of its principles is of benefit and advantage in every occupation and in all conditions of life. Next to the profession of arms, it is the profession of honor. Forensic triumphs are second only to victories won upon the battlefield, and an acquaintance with the lives of those who have achieved renown in such memorable contests, the gladiators of the intellectual arena, must be of absorbing interest as well as of incalculable advantage to the ambitious young

students who are preparing for the contests of the future.

The compiler of this series is a young man of unusual diligence, thoughtfulness and application, himself a member of the bar and an author of considerable repute, who is in cordial sympathy with those for whose encouragement this work is especially intended.

JOHN J. INGALLS.

Oak Ridge, April, 1891.

THE EVOLUTION OF LAW

A HISTORICAL REVIEW.

The Evolution of Law

SUBJECT IN GENERAL.

It would require volumes to exhaust the history of the evolution of law in all its comprehensiveness; but the subject is quite well covered in the author's commentaries, embraced in two volumes, and in an additional volume dealing with the nature of man, the necessity for laws to govern him, and much of the theoretical laws of ancient times. This volume, based upon all of the author's writings, is only designed to maintain the thread of the subject for the use and edification of those who do not see fit to give more thought and attention to it.

Laws existed ages before the era of advocacy, and it is evident that their permanent establishment made the legal profession a necessity, having developed from its crude state until it is now recognized, next to the profession of arms, the profession of honor.

All ancient chronology falls easily into three general divisions: The fabulous, the legendary and the probable or natural. The fabulous should not be wholly cast aside, nor the legendary

denied; neither should the former be construed as actual, nor the latter held as literally true. The conclusions of those who are credited authority on ancient history should not be blindly accepted, but they should be carefully weighed, and only what is logical and natural should be given consideration. Therefore, in this review we follow the laws that have governed the human race, from the most primitive times to the present, and have endeavored to treat the legendary in a rational and impartial manner, in the light of scientific development and modern civilization.

PRIMITIVE MAN.

From the dawn of enlightened civilization man has been what is called a social animal, but science, anthropology and ethnology establish the fact that, in primitive and prehistoric times, generally accepted as the era known as the Stone Age, man, in whatever form or shape he then was, roamed about the regions of the earth like the wild beasts, living individually in a cave and hunting for his food. The only companion he might have had to share his rocky abode was the female, whom he carried off to his quarters by main force. The strongest took what was his conception of the best, and his possession was disputed only by one fit to best him with stone club, tooth and nail.

History, as is often said, repeats itself, and man

of to-day, notwithstanding his boasted enlightenment and civilization, in many instances reverts to the instincts of his primitive ancestors, and the habits of the beasts are uppermost in his actions. Man existed in this savage stage for ages before his nature, through the aggregation of individuals, became subdued and enabled him to live more or less at peace with his fellow creatures, who were the progeny of his own flesh and blood.

He then entered into the barbaric stage, living apart with his own family, the weaker being unable to defend himself from the incursions of the stronger. Hence the fittest survived, and the other kind passed away, either through starvation or a cruel death at the hands of a brother. On their hunting expeditions the males captured the females of other families, whose protectors were also on the hunt for food. Children were begotten, and the families grew in numbers and strength. As the descendants multiplied, the strongest of a particular family was looked up to as the head. In order that he might successfully repel the attacks of neighboring families, the head, who was usually the father of the family, endeavored to retain under his control as many able-bodied men as he could. He therefore settled all disputes of members of his family, thus fostering the instinct of protecting the life of all, lessening the disposition to kill one another.

Only when the authority of the father was questioned, or for the commission of an offence against

his own family, was death the penalty. Occasionally the offender was strong enough to protect himself from the attacks of his relatives, and either became a wanderer on the face of the earth, captured a female and reared a family of his own, or by the strength of his arm made himself the head of a family.

UNIT OF ANCIENT SOCIETY.

In this way, man, from being a cave-dweller in company with his female companion, evolved the first unit of primitive society, the family; and from his first law, the satisfaction of his appetite, he began to obey the customs of his family as laid down by the father. Maine in his "Ancient Law" says: "Archaic Law * * in all its provinces, is full of the clearest indications that society in primitive times was not what it is assumed to be at present, a collection of individuals. In fact, and in view of the men who composed it, it was an aggregation of families." The unit of ancient society, then, was the family.

PATRIARCHAL GOVERNMENT.

So from the best authorities, the most primitive form of government of the first aggregation of people in the similitude of a community, was the patriarchal, its laws simulating in their simplicity the mild authority of the head of a family, in whom

were supposed to be posited wisdom and virtue in a greater degree, and more fully developed, as were his physical attributes; consequently the father or head of a tribe was looked up to as a model worthy of emulation, and one to whom obedience was due. This father of the family, or *Pater Familias,* as he was called in Rome, where the family as a form of government reached the crest of development, had absolute power over his descendants even to the question of life and death, and was the final arbiter in all disputes between the members of his family.

This strictly patriarchal form of government, coeval with the dawn of the most primitive aggregation of human beings, from which, through the slow process of the march of civilization, has been evolved the present theory of laws that to-day guide the destiny of great nations, still exists in portions of Asia, Africa, and among the savage tribes of America.

ORIGIN OF THEOCRACY.

When men began to be gregarious through that love of companionship which the term implies, or for a more perfect and mutual defense against common enemies, it was natural, in consequence of their ignorance of physical laws, and the superstitious fear which grew out of it, that they should attribute a supernatural interposition in even the most trivial of mundane affairs; hence was evolved

the theocratic form of government, a commingling of the divine with the human, with varying degrees of the direct interference of the god or gods in all that pertained to the welfare of the community.

This seems to have been the next step from the patriarchal in the evolution of law. It, too, was crude, unstable and changeable, but gradually from it were developed codes and regulations more apposite to the advanced condition of the peoples for whom they were established, the tenets of many of which have come down to us through the æons, and form the base of much that is recognized as the true spirit of the law.

THE TRIBE.

Maine very ably points out how the family developed into the tribe, and how the aggregation of tribes constitute the State. The evolution from the savage to the gregarious stage is common to all the nations of the earth.

Each of them has gone through the different steps. Some have developed more quickly than the others, as, for instance, the Egyptians, Chaldeans, Babylonians, Assyrians, Romans, Greeks and Hebrews. Some of these are now extinct, having been absorbed by a stronger race developed later.

FORMATION OF CRUDE STATES.

With this development of the animal man, all

the laws were evolved. He learned to adapt himself to circumstances, and made rules for his conduct. It is only the aggregation of mankind that brings up new conditions, which man gradually learns to meet.

Thus in the family the *Pater Familias* has absolute authority from which there is no appeal. The formation of many families into the tribe brings forth the chief or king, with the fathers or patriarchs as his counsellors and sub-chiefs.

The tribe goes out to conquest and makes the vanquished its servants or slaves, which is no doubt the origin of caste. The tribe grows in numbers; more land is needed for the habitation of its members, and the love of battle drives them to wage wars. Crude States are formed.

Now, one tribe conquers, and is in course of time conquered by a stronger neighbor. Occasionally one great man is chief or king, and his acts and wise laws come down through the ages preserved by tradition, and the writings of priests.

ORIGIN OF HEREDITARY RULERS AND ARISTOCRACY.

It is reasonable to suppose, according to the customs of the tribe, with its strong family ties, that when a chief or king passed away, the leadership should revert to his descendant. Rulers everywhere are therefore hereditary, whether they be chiefs of tribes or aggregations of tribes formed into States.

The feeble ruler at last gives way to the dominion of a few powerful sub-chiefs, who form themselves into an aristocracy.

It is universally true that the epoch of kingly rule is followed by an era of oligarchies, and where there is still a so-called monarch, his authority is greatly reduced, and among most nations becomes merely a hereditary general, if he has the ability.

CUSTOMARY LAW.

The aristocracy lays down the customary laws of the tribe, influenced by the priests, who are the agents of its gods. Superstitious fear was part of the nature of primitive man, and the votaries of their so-called gods practically ruled the different tribes. Everything was done with or without the sanction of the gods. and the priests impressed the simple mind of man with the belief that they alone were the judges of what would or would not be favorable to the deities.

Especially was this true among the Asiatic tribes, where the priestly order gained the ascendancy as far back as history or tradition takes us, and is still in entire control among the nations of the East. Hence the inevitable intermingling of religion and State, a condition that even the peoples of the Occident were able to change only in our own times.

ORIGIN OF WRITTEN LAWS AND CODES.

This era of customary law passed away when writing was imparted by the priests to the few that had charge of the affairs of State. It was then that the codes, of which the Twelve Tables of Rome are the most interesting example to the modern student, came into vogue.

When primitive law is once embodied in a code, there is no more spontaneous development. Changes are made deliberately and from external causes and a desire for improvement.

It would be wrong to say that there was no change in the customs of a tribe from the time of their express publication by those in authority to their written compilation into a code. But changes in the law and customs of primitive society were dictated by the chief or aristocracy, according to caprice and religious sentiments.

ORIGIN OF VILLAGE COMMUNITIES.

One remarkable phase of primitive society that grew directly out of the aggregation of man into the tribe was the village community, which is still extant, more or less, in its ancient form, in countries like India, Russia, and among the tribes of American Indians and African negroes. The community claimed common descent from one great ancestor, and owned land in common. It was made

up of related families, and each community had its own customs and laws regulating the conduct and affairs of its members.

The representative of the founder of the community was the head or patriarch of the village. These village communities formed the nuclei of the later kingdom or monarchy. Strangers who purchased some land from the community were occasionally allowed in the brotherhood, but they were required to abide by the customs and laws of the tribe which they joined.

THE MOST PERFECT THEOCRACY.

The most perfect exposition of a theocracy is found in the Bible, wherein we are told that Moses, the famous lawgiver, ascended to the cloud-capped regions of Sinai to receive from the hands of the living God those laws which were to be the rule and guide of His chosen people.

In the legends of ancient countries we very often run across a tradition that laws were handed down to some great man directly from the gods, but as soon as writing became known to the learned few, there is evidence that the lawgivers resorted to their newly acquired art, and thus we find not a few remains of primitive law.

The gradual evolution of mankind with the mixed civil, moral and religious ordinances took place among all the nations of the globe, and it will now

be our object to chronologically follow up their separate governments and important changes in their laws.

EGYPTIAN LAWS—CLAIM OF DIVINE ORIGIN.

In that wonderful civilization of the ancient Egyptians, the records of which stretch so far into the dim and shadowy past that the mind is lost in the mists of their antiquity, their admirable laws and their methods of administering justice, like the laws of the Children of Israel, were firmly believed by that remarkable people to have had a divine origin; that Thoth, their god of eloquence, corresponding to Mercury of the Romans, with his own words formulated them for the benefit of all mankind.

Moses undoubtedly copied many of his laws from those of the Egyptians, as he was skilled in all the learning of their schools, which were comparable in their knowledge of the sciences and the arts to much that we boast of, and in some other divisions of those branches infinitely superior to anything that we can lay claim to.

For while the Bible is relatively silent in relation to the wonderful enlightenment of that nation, we have an indisputable record of its brilliancy. We have a more perfect knowledge of their every-day life, of their public affairs and general history, because of their persistent usage of perpetuating on

the enduring rocks the simplest as well as the most important events of their lives, than we have of Greece or Rome, nations that are as of yesterday compared to the venerableness of ancient Egypt.

NEIGHBORING NATIONS—ALLEGED DIVINE ORIGIN OF LAWS.

Notwithstanding its reserve in this particular of Egypt's magnificence, the Bible makes reference, somewhat vaguely, it is true, to other great nations and dynasties, differing in degree and detail of power and grandeur, but believed to be under the care and guidance of the gods. Consequently, it is reasonable to suppose that the forms of government of those kindred nations were either based upon an assumption of direct interference by the gods, as was Egypt's, forming a pure theocracy, or a human one where the theocratic idea largely preponderated in the character and administration of their laws.

Biblical history also signally fails to furnish us with any of the prescribed laws of the existing nations before the promulgation of the Mosaic code, yet there were many, as we now know.

NIMROD.

Nimrod, who is referred to as a mighty monarch two thousand years before the time of Christ, must

have ruled a country whose civilization was considerably advanced, although his form of government may have been of the patriarchal or paternal order.

But at the same time, his control may have been dictated by the caprice of his will, after the manner of monarchs in the earliest stages of strong centralized governments. The tenth chapter of Genesis states that: "The beginning of his kingdom was Babel and Erech, Accad and Calneh in the land of Shinar, and that he began to be a mighty one in the earth."

CODES OF ḪAMMURABI AND MANU.

Harper, in his work on the "Code of Ḫammurabi," gives us an almost literal translation of a code of laws, consisting of almost three hundred sections, supposed to have been made 2250 B. C., while Ḫammurabi was King of Babylon.

The code shows the barbarity of the times. Death is the punishment for many offences considered minor to-day. Still, it covers the scope of criminal and civil wrongs quite fully, and has an arbitary punishment for each offence.

Primitive India also had a code known now as the Hindoo Code of Manu, which was supposed to have been delivered by the gods, but which the priests must have compiled.

MOSES AND JETHRO.

That the prevailing idea of all forms of laws relating to government were based upon divine origin in those times is confirmed in the eighteenth chapter of Exodus, where is related that when Jethro saw Moses sitting to judge the people, he inquired why he thus sat alone, and Moses replied that the people came unto him, and that he judged between them, and made them know the statutes of God and His laws.

Moses was well versed in the secret or esoteric religion of the Egyptians, and naturally impressed upon the minds of his followers the divine origin of the laws by which he governed them.

This conversation between Moses and Jethro, however, appears to have occurred previous to the date of the tables given to the former on the top of Sinai, so it is reasonable to presume that up to that time at least his laws, by which the Children of Israel were governed, were taken from the Egyptian code with some modifications.

EGYPTIAN ANTIQUITY.

By carefully examining Egyptian history even to the remotest period into which Egyptologists have been able to penetrate, highly civilized communities existed, and society possessed many of the notable features of culture and refinement of our own day.

The bondage of the Israelites occurred when all the nations of the world were supposed to have been in absolute infancy, according to the Biblical chronology; yet the fact is, at that time the Egyptians were at the culmination of their civilization, whose architectural ruins are the wonder of the twentieth century. It is the oldest State of which we have positive and tangible evidence, whose history is attractive in the sense of its great antiquity, even if it presents no other.

Ancient Egypt claims precedence in some very important distinctions from other nations of remote antiquity. Its civilization was the oldest in the order of degree of enlightenment, comparable in many of its features to any which has followed, in some particulars reaching far beyond anything that even the present age has attempted.

So grand was it, we contemplate with astonishment and awe the magnificence and scope of its ruins. Other great ancient States base their weird and strange history upon the fanciful weavings of tradition; the Egyptians were a traditionless people. Keeping a faithful record of passing events, they were emulated in this particular by no other; not only were the affairs of State truthfully recorded, but the most minute occurrences of daily commonplace doings.

Everywhere, all over their vast country, wherever a mass of the indurated rock presented itself accessible to the sculptor's chisel, on the walls of

their palaces, on the bases, plinths and shafts of their obelisks, on the surface of their colossal monuments, in the dark interiors of their wonderful tombs, there may be read in carved hieroglyphic and ideographic characters the sacred chirography of the priests of ancient Egypt, a complete history of long dynasties, whose chronicles reach so far into the shadowy mist of the ages that we are appalled at their remoteness.

In the very coffins of their dead, too, whether victors in the bloody field of Mars, eloquent in the councils of State, or wise in the mysteries of their veiled religion, whether rich or poor, prince or peasant, are recorded, on rolls of enduring papyri, the deeds done in the flesh by their now silent occupants.

India, too, claims an antiquity which is hoary with the frosts of chiliads of ages; but older than any of her sacred books, older than the weird cosmogony of the Chinese, more remote in the gray dawn of the world's history than the Scripture writings, the songs of Greece, or even the stories of the fair-haired Aryans of the Hindostan peninsula, to whose youth and radiance the poets have added the crowning gifts of immortality, is ancient Egypt, who laughs at the boasted antiquity accorded to all these traditions, and presents an indisputable record which proves that she was revelling in art and science and in a civilization the extent and profoundness of which astound the world to-day

when their people, in all probability, were barbarians, huddling in the primitive forests, in intellectuality but little removed from the troglodyte.

JUSTICE IN ANCIENT EGYPT.

In Egypt, thousands of years ago, there was a jurisprudence which, for its exposition of justice in many of its declarations, was incomparable, and the administration of that justice in the Egyptian courts of law possessed features well worthy the emulation of the boasted civilization of the age in which we live, where, too often, "it is the man who is tried, and not the case."

DIVINE RIGHT OF SOVEREIGN.

Under the primitive idea, of which even some of the self-sufficient monarchs of Europe to-day, in their egotism, cannot divest themselves, the divine right of the sovereign, supposed to have received his authority direct from God or the gods, involved the inherent right of enacting the laws.

Upon this principle, as in all the ancient governments, Egypt's ruler was absolute; placed over the people by divine appointment, he could do no wrong; there could be no *laches* on his part in the administration of justice; there was no limitation to his power as to time, as is wisely reversed in the modern theory of the prerogative of the

State in its relation between itself and the subject, in the application of the penalties of the law for its infringement.

THE COURTS OF ANCIENT EGYPT.

There were established courts in Egypt, presided over by learned judges, with rules governing their administration of justice, long before any recorded history of Greece or Rome; when the inhabitants of England were a race of savages, and the enlightenment of the world was concentrated in the valley of the Nile!

The courts of ancient Egypt were similar in some respects to our own in their organization. Their judges were both elective and appointive, and the higher court, as constituted, was analogous to our Federal and State Supreme Courts. It was composed of thirty judges, whose functions were comparable to those of the Associate Justices.

THE ARCH-JUDGE.

When the court assembled for its first session the thirty judges elected one of their number to preside over their deliberations, with the title of Arch-Judge, his duties being similar to those of our Chief Justice. He received, too, a much larger salary than his associates, as his office was more important, and bore with it a higher degree of honor.

The Arch-Judge was selected with special reference to his superior intelligence and his distinguished social position in the city from whence he came. It was the highest honor conferred by the State. The office carried with it this further distinction—the city which had sent him to the Supreme Bench had the right to select another judge to make up the complement of the thirty Associates.

The allowance of the judges of this high court was, of course, dependent on the sovereign, but it was always large enough to enable them to live as became their exalted position, and place them beyond the possibility of being bribed.

Their integrity was unquestioned, and their ability recognized. Both integrity and ability in relation to their legal talent were inseparable conditions precedent for elevation to that responsible office.

PUNITIVE MEASURES.

Justice was administered in the courts of ancient Egypt with a conscientiousness that is surprising in its contemplation by this age, when often too much partiality is evident. The Egyptian idea of punishment, however, differed widely from the accepted modern theories. With them it seems to have savored of the law of " an eye for an eye and a tooth for a tooth"; purely punitive, and not in

any wise reformatory, which latter is the modern view. In ancient Egypt it was believed that the offender must be punished as a sort of compensation to the individual who had been injured by his acts, and not that he was to be reformed while undergoing punishment; the whole idea was one of revenge, as a basis for the strong interference of the law.

BRIBERY.

But there were other ideas involved in the Egyptian administration of justice in their courts which might be emulated with benefit to this age of corruption and bribery in some of our tribunals.

Their horror of bribery is thus recited by Diodorus in his reasoning on the spirit of the Egyptian laws: "If the terror which hangs over the guilty in the hour of trial could be averted by bribery or favor, nothing short of distrust and confusion would pervade all ranks of society. Their principle was not merely to hold out the distant prospect of rewards and punishments, nor merely threaten the future vengeance of the gods, but to apply the more persuasive stimulus of present retribution."

EQUALITY BEFORE THE LAW.

In Egypt justice was administered with the strictest regard to the proper interpretation of all

that the word implies, so far as relates to the truth of the evidence upon which rested the conviction or acquittal of the accused when brought to trial before the courts.

The real merits of the case were sought for, and no favors were granted because of social position or wealth. The criminal drenched with the gore of his victim, and clothed in the garb of the beggar, with his fortune on his back, or in that of the nobleman, loaded with jewels and attended by a retinue of servants, stood equal at the bar of the great tribunal before which he was summoned to appear.

FORMALITY OF TRIALS—FIGURE OF TRUTH.

The trial of causes was attended with great formality and solemnity. When the case was called, the Arch-Judge was invested with a chain of gold, to which was attached a figure of Truth, itself ornamented with precious stones.

Truth was a cardinal virtue. Justice was its synonym or interchangeable term. All other attributes, prudence, temperance and the kindred qualities which go to make up the modern formulary of morals, upon which we dwell so earnestly in our civilization, were all subordinate to veracity.

It is this sovereign attribute of their natures which gives credence to all that we find in the mural inscriptions of Egypt, in the stories written on their rolls of papyri, and the carvings on their obelisks.

Much that was told to Herodotus by the priests of Memphis and which the college student of the "Father of History" of forty years ago was taught to regard as apocryphal, at least, has since the investigations by Egyptologists during the past half of a century been confirmed in an astonishing degree, a high tribute to the conscientiousness of everything detailed on the rocks, embracing an enduring record of many dynasties.

The emblem of Truth, which the Arch-Judge wore during the proceedings of the trial, had her eyes closed, as has the modern effigy of Justice in our own courts, and in her hands was also the balance, which our blind goddess holds; so it is apparent to the most ordinary intelligence that not to Rome or Greece are we indebted for the emblem of the impartiality of our law, but that to ancient Egypt we must go to find its origin.

In the Egyptian symbolization, its effigy of Truth typified to the judge that he was to be governed by the evidence of what he heard, to depend upon what alone came to his ears, and not what his eyes might see, an admonition to him that the virtue of blind impartiality was strictly exacted.

ANCIENT BOOKS OF LAW.

The Arch-Judge having put on the emblem of admonition of the sacredness of his duty, the trial commenced. Then the great books, eight in num-

ber, containing the laws of Egypt, were placed within accessible distance of his chair, and to the ponderous pages of these he frequently turned, during the course of the proceedings, when some knotty problem presented itself, or if he desired to find a precedent in the decisions of the learned Arch-Judges who had previously occupied that high office.

THE PLEADINGS, TRIAL AND JUDGMENT.

All complaints were made in writing, as were all answers; every particular that bore in the least degree upon the facts of the case was included in the document submitted to the court by the plaintiff, even to the amount of damage he demanded, or the extent of the injury he had sustained.

This completed, the defendant was then permitted to take the plaintiff's paper, to which he filed his answer in writing, and usually made a general denial, attempting to show a mitigation of the alleged offence, or that the damages asked were wholly excessive, in their aggregate, for the injury inflicted. The complainant then had the right of rebuttal and the closing, as in our practice in the courts of to-day.

If no witness on either side appeared when the documentary evidence was finished, it was submitted to the thirty judges, who decided according

to their interpretation, when, after a consultation, they rendered a decision, which was required to be ratified by the Arch-Judge, who then proceeded to pass judgment. In doing this, he arose and touched with the effigy of Truth, with which his person was invested, the party who had gained the suit.

NO ADVOCATES OR PLEADERS.

There appear at first to have been no pleaders in the Egyptian courts of law during the trial of cases. There was, in fact, a decided opposition to them in the spirit of their jurisprudence, for the reason, as given by their writers of the practice, "that the persuasive arguments of oratory, or those artifices which move the passions and excite the sympathy of the judges, were avoided, and thus neither did an appeal to their feelings nor the tears and dissimulation of an offender soften the just rigor of the law."

But at the same time there was no abridgment of the rights of either party to the suit. Every opportunity was afforded the offender to properly present his side of the issue without being permitted to take any advantage of his opponent.

Poor and rich, ignorant and learned, honest and dishonest, were placed on an equal footing before their tribunals. It was the case rather than the persons upon whom the court passed judgment.

VERACITY A CARDINAL VIRTUE.

A citation of the criminal code of Egypt, and the methods of dealing with criminals, can be but briefly referred to here. Lying was the most disgraceful thing of which a man could be guilty, and when the direct cause of injury to any one, received the punishment which it merited.

To maintain a falsehood by an oath was the unpardonable sin, and death the inevitable penalty. The calumniator, in the sense of irreverence, was punished severely, and the false accuser received the same punishment that would have been awarded to the one he accused if the charge had been true.

PENALTIES—OFFENDING MEMBER OF PERSON.

In a study of the ancient laws of Egypt, it will be discovered that they possess all the characteristics of those ages which we are pleased to call primitive, though the term is purely relative, and used when compared with our own time, and those countries whose history is dissociated, at least, in a measure from the mythical.

That is, when a crime was committed, the punishment was inflicted upon the offending member of the body; thus, in a forgery, and those other crimes where the hand was the instrument, it was cut off.

NO RIGHTS TO WOMEN.

Egyptian law, at the height of its development, gave absolutely no rights to women. This was true of all ancient countries. The female was treated as little more than a chattel, and was the property of the head of the family.

When she married she became the property of her husband's family. In fact, in ancient Rome, when a female married, her husband was called her "Pater," she merely being a unit of his "Familia."

WOMEN'S RIGHTS AMONG TEUTONIC RACES.

There is but one race in history that recognized woman and acknowledged her rights. We refer to the Teutonic tribes, whose women had equal voice with the men in their Folkmoots. Where the interests of the whole tribe were at stake, the opinions of the mothers were always asked, and respect was paid to them.

When the Teutonic races overran Europe, they took their wives with them. They were not forced to intermarry with the women of the conquered tribes, and so did not sink to the level of the savages they sought to govern, as happened to the Romans and Greeks. The Teutonic race is alive to-day, governing the world, and promises to continue in that capacity to the end of time.

THE ISRAELITES.

Next to the Egyptians in order of time come the Israelites, of whom we have complete and fairly authentic records. It is a historical fact that Israel was one of the youngest nations of the Semitic race.

They had the benefit of the development of Babylonia, Assyria and Egypt, and the similarity between their customs and those of the latter shows that they assimilated much from the peoples they came in contact with. But the moral influences of the Jewish race stamped its force upon them and made Israel's law a guide for all later ages.

Moses studied the laws of Egypt, and certainly used his knowledge in his Code. But he made great strides towards modern ideas of religion and law. Several millions of people still look to his words for guidance, and over two hundred millions of people read his books with variations, and regard them as Holy Writ. He was the first to teach that there was one God. This thought revolutionized the world.

Instead of dozens of gods, vengeful, jealous, boastful, fearing, there was one Supreme Being, a God of Love and Justice, "one who changeth not and in whom there is no shadow of turning." Moses was the first man to advocate the brotherhood of man. We find many passages in his writ-

ings requesting us to benefit our enemies, and his laws led in that direction.

The fact that he led his people to believe that the laws were handed to him by the "Living God" shows that he used expediency. It was the only way to impress the people of the time, and he took advantage of it. Humanity enters into his laws. He commands his people to return the stray animal of their enemy to its rightful owner. His mind contained twentieth century ideas.

We are all one family—we should not wrong or harm an enemy. So now, instead of thousands of warring tribes, we have a few strong, federated states who fight but seldom.

RIGHTS OF WOMEN IN ISRAEL.

Among the Israelties, too, a woman had certain rights, which were far in advance of any that the surrounding nations offered to its females.

Although the wife of the Hebrew was, according to the custom of the Semitic tribes, nothing more than a chattel, still the Israelitish lawgiversendeavored to protect her where there was the most danger that she would be wronged. Most of their laws in regard to the subject, preserved to this day, have this one practical purpose.

LAW OF ASYLUM.

One custom or law of the Jews which was most highly developed amongst them, although it was

also in use by the Greeks, was the Law of Asylum. One who murdered a fellow-being accidentally and unpremeditatedly was judged by the community as a whole, and if the man-slayer was innocent, he was allowed to live in a city of refuge.

An avenger was prohibited to touch him while the latter was within the limits of such city. The murderer was to remain in the city till the death of the high priest, when he was allowed to live in any community. In a trial for murder two witnesses were required to convict.

Greece had a Law of Asylum also.

Any sanctuary or statue sacred to the gods would protect a murderer from the vengeance of the relatives of the slain. But there was no trial at the place of refuge to test the innocence of the murderer, therefore guilty and innocent perpetrators of murder, provided they could reach any place sacred to the gods, were immune.

This custom has remained in some countries quite up to our own times. Any criminal who sought protection of the Church could not be tried by the laity. Only when the State severed its relations with the Church was this custom abolished.

CHINA—CONFUCIUS.

Among the ancient countries China should receive attention. And in discussing the history and laws of China, we are forced to focus our thoughts about their one great man—Confucius.

Just when the Chinese evolved from the nomadic stage and decided to settle down in the territory in which they now are, enclosed by a wall impregnable up to a few hundred years ago to the western nations, is a matter of conjecture. Some historians put the date at about ten thousand years before Christ.

But we have an authentic tradition concerning the Chinese that dates back to about two thousand B. C. But as far as history does date back, the government in China was feudal, the vast country divided into many small states, with a prince or governor at the head of each.

These provinces were very loosely affiliated into a general government, with an Emperor at its head, who was the supreme ruler. States' rights prevailed, and absolute freedom was allowed to each. The princes or governors had full powers over their subjects, and dealt out justice as they thought right.

CONFUCIUS—HIS PRINCIPLES.

At the head of one of these provinces was Heih, the father of Confucius, who had impoverished himself in his efforts to benefit his people. He was a man of seventy, married to a girl of seventeen, when their son, destined to be the greatest man China has produced, was born at Champing about 550 B. C.

Heih died when Confucius was but three years old, and the mother, rather than live on the charities of rich kinsmen, decided to take her boy and live in poverty and obscurity in one of the villages of the province.

The boy grew to be sturdy and strong, and at nineteen he was stronger, larger and more skilled than any youth in the vicinity. In his youth, the mother, who was more intellectual than the average women of her age, told her son of the life of his father, his achievements and tribulations, his altruistic labors up to his dying day. The boy grew up with but one idea in his mind, to follow in his father's steps, and better the condition of his fellow beings.

He became the prince of his province, and his simple duties may be guessed at, when we find that his work as keeper of the herds required him to travel long distances to settle disputes between the herders of goats. The goat range belonged to the State, and there were many quarrels to adjust.

Confucius summoned the disputants before him and talked to them of the futility of quarrelling. He importuned them to settle amicably any controversies that arose. It was his object to have the combatants meet in complete understanding. Then it was that he set forth his famous maxim: "You should not do to others that which you would not have others do to you."

His principle of government was "Love thy

neighbor as thyself." It was his object to put down strife and have the people decide their own disputes. "To fight decides who is the stronger, but it does not decide who is right." This is twentieth century philosophy.

He believed that to decide specific cases for others would cause them to lose the power of deciding for themselves. A man who did wrong punished himself, and to fight should only be the resort of a man protecting self and family from bodily harm.

ORIGIN OF ANCESTOR WORSHIP.

Confucius always retained the most devout memory for his mother, and he never went on a journey without visiting her grave, and never spoke to any one on his return without first paying his respects to the memory of his parent.

This was the origin of what is coarsely called by modern people "Chinese Ancestor Worship."

What Confucius did was religiously followed up by his people, and filial love and respect is ingrained in the nature of the Chinese to this day.

DEPOSITION AND EXILE OF CONFUCIUS.

At an early age, Confucius became Minister of State, and while in that office he made many reforms in the existing government, with the result

that he gained the enmity of the powers of the Empire. This finally caused his deposition and exile, for which he cared little, as it gave him opportunity for travel and thought.

So perverse are the sentiments of the mob, that only after his death was the value of his principles and doctrines fully appreciated, and the great majority of the Chinese of to-day are followers of Confucianism. So imbedded are his ideas in the minds of the Chinese, that an ignorant native will quote many of the maxims of Confucius in his daily conversation.

His principles form the Chinese "Religion."

PRESERVATION OF CONFUCIANISM.

The precepts of Confucius are similar in many respects to those of the Christian religion in its infancy. We are indebted to ten disciples of Confucius, chosen by himself, for the preservation of his ideas on the subject of morality, philosophy and government.

GREECE—ATHENS AND SPARTA.

The interval between the time of the civilization of Egypt and that of about nine hundred years before Christ, when Sparta was governed by Lycurgus, is an awful gulf to contemplate in looking across the abyss of the ages compared to which

the period from the present back to the era of the great Spartan lawgiver, although fearful to brood over when measured by the length of our short lives, is as yesterday, so remote was the civilization of Egypt when at its culmination.

LYCURGUS AND THALES.

Lycurgus, whose ideas and administration of law comes next in the order of our review, because of some family difficulty in relation to the succession of heirship to the throne, went into voluntary exile for a time, during which he travelled extensively from place to place, considering attentively the various forms of government of the countries he visited.

It was while on one of these journeys that he fell in with Thales of Miletus, renowned for his learning and wisdom regarding matters of State. Between him and Lycurgus a strong friendship ripened, and Lycurgus persuaded Thales to accompany him to Lacedæmon, which he did But the people of that country regarded Thales as a mere poet, while he was really one of the ablest of lawgivers.

He was a poet, also, it is true, but his muse was the inspiration of law and order in the community, and the songs that he sang were full of the beauties of a government where peace and virtue reign.

Lycurgus was an apt pupil of the wise Thales;

listening and studying the great ideas evolved from the brain of his companion, so that much of the wisdom which Sparta has attached to his name, coming to us through the ages, must be attributed to the influence that Thales exercised over him.

RETURN OF LYCURGUS—HIS REFORMS.

Lycurgus travelled continuously through Spain, Africa, India, even going into Egypt; studiously observing the laws, manners and customs of the natives of those countries through which he passed.

Sparta, meanwhile, tired of the condition of political affairs, frequently importuned Lycurgus to return home: "Kings indeed we have," said the people to him, "who wear the marks and assume the titles of royalty, but as for the qualities of their minds, they have nothing by which they are to be distinguished from their subjects; that in him alone was the true foundation of sovereignty to be seen, a nature to rule, and a genius to gain obedience."

Upon these overtures, Lycurgus returned to Sparta, where he immediately entered upon the work of those reformations which had suggested themselves to him during his extensive travels in studying the methods of the various governments he had visited.

His revolution of the laws and customs of Sparta was to be thorough and complete; but having thus

made up his mind as to what he should do, he must, of course, first consult the oracle, to find whether the gods were propitious.

For that purpose he set out for Delphi to appeal to Apollo, and returned with that wonderful decision from the god: "He is called the beloved of God, and rather god than man; that his prayers were heard; that his laws should be the best, and that Commonwealth which observed them the most famous in the world."

Thus, full of inspiration and enthusiasm at the propitious declaration of the Delphian oracle, he began his proposed labor by persuasion and gentle methods, conveying his ideas to the leading men of the country, in order that they might, with understanding, enter into the spirit of the reform that he suggested, as best of all for the people and the nation, and render him that aid without which he would not be able to carry on the work.

His plans at first were disclosed only to a chosen coterie of intimate friends; these, to whom he had imparted some of his own earnestness, at once acceded to his proposition.

Others, who were indifferent or lacked zeal, he soon succeeded in bringing around to his way of thinking. These men whom he chose to help him in his great work composed the best element among the people.

OPPOSITION OF MASSES.

It would have been in direct stultification of human nature if Lycurgus had met with no opposition in the promulgation of his plans among the masses, who, of course, were decidedly antagonistic to the sweeping changes contemplated by him. But he anticipated all this by placing armed friends in the market square, where the disturbance would naturally occur, and where it did occur.

So great was it, the King thought that the riot was a conspiracy against his person, but upon Lycurgus assuring him that nothing of the kind was intended, and fortified by himself and his party renewing their oath of allegiance, the monarch himself acquiesced in the plans of the leader.

ORIGIN OF THE SENATE.

The initial change that Lycurgus made in the old established laws of Sparta, and which was the most radical of all, was the establishment of the Senate, to which he gave a power equal to the king's in matters of great moment.

As Plato expressed it: "Allaying and qualifying the fiery genius of the royal office, gave steadiness and safety to the Commonwealth." The Senate was composed of thirty members, including the two kings, and so earnest was Lycurgus in this mighty innovation, that he went to the great

trouble of consulting the Delphian oracle again about it.

The Rhetra from Delphi was of the most encouraging character, but it was to be submitted to a vote of the people, and the exact locality where it was to be taken fixed by the provisions of the Rhetra, and the commons were to have the final affirmation or rejection of the proposed measure.

DIVISION OF LAND—COINAGE.

The Senate firmly established, the next succeeding efforts of Lycurgus, in his work of reform, were first the delicate and very difficult task of dividing the land among the people.

This was indeed a perplexing and embarrassing matter, for the condition of wealth in Sparta, like that in the United States to-day, was confined to relatively few persons, and the country overburdened with an impoverished and distressed population.

To banish such an unequal distribution of opulence from the State, together with its entailed luxury and pride, he decided that all should be placed on an equal footing, and live together.

This effected, he was not satisfied; he determined to carry his ideas of division much further, but he found that what he now proposed was much more dangerous than he had at first conceived it would be, and he was driven to strategy in order to effect his purpose.

The coin of the country, which then consisted mainly of gold and silver, was ordered to be brought in, and he substituted iron for the precious metals. This bold depreciation of the currency had a very strange effect upon the country, for obvious reasons, too long to be enumerated here; but one of the consequences was, that it drove away every trade in which the precious metals entered as a factor. Next he ordered that all the people should eat together at a common table, and at these meals was prescribed the character of the food to be eaten.

The children were not only allowed at the common meals, but were compelled to attend, that they might be instructed by the words of wisdom supposed to fall from the lips of their elders. On these occasions, too, the most aged man present told them as they entered the apartment that nothing which they heard was to be repeated outside.

Strong drink was permitted only under the most rigid precautions against intoxication, as every one was compelled to go to his home without a lantern or any kind of light, as Lycurgus desired that they should accustom themselves to the darkness, and walk boldly in it anywhere.

LAWS OF LYCURGUS UNWRITTEN—DOMESTIC LAWS.

None of these extreme laws of Lycurgus were ever committed to writing; the oracle had long ago

discountenanced that, on the principle that a people should learn them by heart, and be a part of their education.

Another of his curious laws was that which forbade continuous wars against the same nation; the reason assigned for this was that the Spartans might teach the enemy the art of war by compelling them to defend themselves for a prolonged period. The births and the marriages of the Commonwealth were regulated with an eye to the rearing of only an excellent class of citizens.

The young women were compelled to walk in the procession entirely divested of their clothing, but modesty was inculcated to a degree that seems strangely dissonant to such a condition of affairs.

The husband when he sought his bride carried her off by force, and no girls of tender years, or little women, were permitted to enter the matrimonial state. All were in the full possession of their maturity and strength.

The children of Sparta were regarded as the property of the whole Commonwealth rather than that of their parents, and Lycurgus so regulated matters in this particular that none but the best men physically and morally were allowed to become fathers.

These things, which are so foreign to our modern ideas on the same subject, would naturally lead us to believe that wantonness and lewdness would run riot in such a state of civilization, but it is a his-

torical fact that adultery was absolutely unknown in Sparta.

Children as soon as born were immediately conveyed to the presence of certain judges appointed for that purpose, by whom they were critically examined, and if they were not up to the physical standard required by the Spartan law were put out of the way.

In his regulations concerning the dead, he provided a singular course; he broke up all superstition which, through ignorance was naturally attached to the presence of a corpse and prevalent among the common people, before he took the matter into his hands.

At funerals, he allowed no garlands to be placed on the grave but the olive and the myrtle, and no name was permitted to be perpetuated on a tombstone except of those men who had been killed in battle; and in the case of a woman, those only who had died in some office connected with their duties in the temples of the gods.

The whole basis of Lycurgus's strange laws seems to have been that the State possessed the attributes, metaphorically, of the individual citizen, and that all rules for its government must accord with that idea.

UNWRITTEN LAWS IN HANDS OF PATRICIANS.

In all primitive forms of government where the sovereign passed judgment upon offences, it was

final, because it was taught to the subject, and as religiously believed by him, to have been divinely inspired.

Later, in the gradual evolution of the principles of law, these supposed divinely inspired judgments became precedents, and were regarded as such, and of which the judges availed themselves in pronouncing their decisions in cases where the crime charged was of a similar nature.

When in the course of time the absolute power of a sovereign was abridged and divided with the nobility, the latter constituted themselves the conservators and interpreters of law, fixing for each class of crimes a sentence comparable to the enormity of the offence, according to their judgment, and not based upon any idea of divine interference.

This was the era of unwritten law, and the method suggested in the foregoing, before the science of writing was common, the only media through which the usages of the people could be transmitted to succeeding generations.

SOLON.

Solon, one of the "Wise men of Greece," so called, comes next in the order we have arranged the text of this review. He flourished about six hundred and thirty-eight years before the Christian era, and was the author of the celebrated "Tables" associated with his name.

He first gained notoriety in his own country by reciting some elegiac verses in the public square, which he had composed, but which were believed to have been impromptu at the time.

They were in relation to the recovery of the Island of Salamis, for which the Athenians had been fighting for a long period, but who had finally abandoned the contest. It was a delicate subject at that particular juncture, so much so that the authorities had decreed death to any one who should have the temerity to refer to it, either by oral or written declaration.

Some time after this Solon was chosen Archon, and invested with power to arbitrate and become a lawgiver.

DEBTOR COULD NOT BE IMPRISONED.

His first essay in the latter direction was to formulate a plan by which debts that had not been cancelled should be forgiven, and that thereafter the body of the debtor could not be held as security, as had been the prevailing custom in Athens.

In conjunction with this he caused the value of the money of the realm to be enhanced to such a degree that although the same number of pieces in a given amount remained as before, their purchasing power was greatly reduced, which was, of course, of immense benefit to the debtor class, without any apparent loss to the creditor.

REPEAL OF DRACO'S LAWS.

He was then invested with greater authority, and given absolute discretion in remodeling and formulating new laws for the State. At the inception of this increased license, he wisely repealed all of the infamous laws of Draco, with the sole exception of those relating to murder. He regarded that harsh code as entirely too severe, agreeing with the saying of Demades: "Draco's laws were not written in ink, but blood."

A certain property qualification was necessary before any man was eligible to office, but all could act as jurors.

Solon was charged with purposely constructing his laws in language of ambiguous character, so that they would have to go to the Judge for interpretation, as it was not intended that they should be taken according to the letter, but according to the spirit of their meaning. Thus, he brought greater honor to his tribunals, the judges of which were proficient in the analyzation of the law.

He disfranchised any one who had remained neutral in time of sedition, on the theory that no man should pretend to care anything for the general public welfare, and by his actions of insensibility remain safe in his private affairs; but ought at once take sides with one party or the other, venturing his chances with the one he supposed to

be in the right, and not wait to see which was to gain the mastery.

DOMESTIC LAWS OF SOLON.

An heiress whose husband failed her was permitted to choose from his nearest kinsman, and his logic for this reasoning was that many who are unfit to enter into the state of matrimony would readily mate themselves with heiresses for the sake of the fortune they would obtain with her; but then she had the privilege of leaving her newly chosen husband when she pleased for another, so that he would consider well the consequences, or abstain from contracting the alliance.

Besides, it were better to confine her choice to her husband's relations, so that what issue there might be would belong to the same family.

TABLES OF SOLON.

Like Lycurgus, from whom he probably drew some of his legal inspiration, in the formulation of his "Tables" Solon made it an almost unpardonable sin to vilify the dead; *de mortuis nil nisi bonum* was one of the most obligatory of all his tenets.

His theory on this point was that the dead must be regarded as sacred, and the living should not be permitted to traduce those who had gone be-

fore them. Besides, there was much safety in preventing a continuance of any discord that might have existed when the person was in the flesh.

It was a grievous offence for any one to traduce a living person in the temples, the courts, in the public offices or at the games; the penalty for this was a double fine—one to the individual abused, and the other to the public treasury.

Previous to the time of Solon, the disposition of property by will was forbidden in Greece, the estate invariably going to the family; but Solon permitted the deceased, where there were no children, to will it where he desired.

He made a broad distinction, however, in the character of wills. If disease, insanity, force or persuasion unduly exercised, as the influence of a wife, for instance, entered into the framing of it as a factor, it was invalid.

Solon prescribed what dress and all other things should be worn during the season of mourning; what the mourners should eat at this time was also regulated by law.

Every unusual and unnecessary manifestation of grief was forbidden, and at a funeral no one was permitted to express regret for the departure of the deceased.

Many others of his laws pertaining to the female portion of the community are very curious; some of them are recognized by ourselves, on the principle that there is a higher law than the prescribed code,

which gives the right to a man to do certain acts where the honor of his wife or daughter is involved, though that act be strictly forbidden by statute.

There is scarcely any matter, however trivial, that enters into the domestic economy of the State that was exempt from the operation of his laws. His "Tables" were intended to serve for a century.

They were constructed on wooden rollers, and called "Axones," which could be turned in their cases, termed "Cyrbes." Cratinus, the comedian, in one of his passages, says of these latter:

"By Solon and Draco, if you please,
Whose Cyrbes makes the fires that parch our pease."

SOCRATES—PLATO.

Just a few words about Socrates and his disciple, Plato, to whom we are indebted for the thoughts of Socrates.

Plato, who lived in the fifth century B. C., wrote much about the State.

In his works may be found a description of almost all forms of government.

He wrote of an ideal state of society, which, however, was never put in practice. It is interesting, however, to show that men, even in ancient times, thought of and believed in ultra-democratic principles.

We more fully show the main forms of Plato's governments in the larger edition on this subject.

ORIGIN OF ADVOCACY—DEMOSTHENES.

After Solon's time, Greece developed some famous advocates or pleaders, as they were then termed, acting either as prosecutors for the State, in defence of the accused, or in civil suits.

Demosthenes was the most celebrated of all the orators that the nation produced, gaining his distinction in the forum for his remarkable eloquence. But causes were not defended in this manner until long after the period of Solon's administration of Grecian affairs.

In Egypt, as has been shown, the judges of the courts acted in the dual capacity of arbitrator and counsel. From the date of the era of Egyptian civilization to the time of Solon, because of so much religious and internecine strife among the nations of the world that were coeval with Greece, or that preceded her in the dawn of veritable history, the records are too vague and indefinite to accurately determine the status of jurisprudence in its relation to advocacy during that long interval.

But it may be asserted without fear of contradiction that the learning, wisdom and culture of Greece had never been surpassed by those States which preceded it.

Particularly in the eloquence of their oratory did her public speakers excel, and their discourses have come down to the succeeding generations as models of diction, grace and purity.

Rome, with all her wonderful scholarship, force and system of philosophy, was indebted to Greece for much in the domain of her school of literature.

Her mythology, too, was taken from Greece almost bodily; names only were altered to conform to the euphony of her language; but Greece herself appropriated the religious scheme of old Egypt, incorporating nearly everything of classical beauty in that ancient faith into her own sublime and dazzling idolatry.

DEMOSTHENES—EARLY LIFE.

Demosthenes, the most celebrated of Grecian pleaders, was born about four centuries before Christ, and died at the age of sixty-three, according to the most authentic necrological records, though with him, as with other famous characters of the classical ages, biographical data are obscure, indefinite and unreliable.

Much of his early life and his ancestry are so confounded with what is evidently mythical, that it is impossible to arrive at definite conclusions in relation to the subject.

Because of some entanglement in the disposition of the estate to which he had fallen heir, through the dishonesty of a guardian, his education was neglected, and when in after years he became noted for his attainments, the fact must be attributed to his own efforts and he must be classed with the

widely disseminated genus of great men in all nations, purely self-made.

DEMOSTHENES—MANHOOD.

Weak, delicate and healthless from his birth, he, by a wonderful effort of his will power in taking an active part in the games of his time, which were so potent in the development of muscular energy, overcame his infirmities.

On his first essaying to speak in public, he was laughed, hooted and jeered at, and such an effect did this reception have upon him that he almost despaired. But fortunately, in this dark hour Satyrus, an actor, who had listened to him, saw that there was genius in the young orator, a talent entirely undiscovered by the rest of his audience.

To Satyrus, who spoke kindly, Demosthenes poured out his overburdened heart; told of his disappointment and grief at his failure, and how he had been one of the most studious and painstaking of men, yet all his efforts were vain.

Satyrus encouraged him, and offered his services as instructor in elocution, which were at once accepted by Demosthenes, who immediately constructed a subterraneous retreat, where, away from the "madding crowd," he could continue his arduous lessons under the tutelage of the kind Satyrus.

It is alleged that he remained in this "dugout" for several months, applying himself closely to the

studies planned by his teacher, comprising the art of declamation, with all of its concomitant branches of delivery, gesture and manner.

Demosthenes always made a careful preparation of his speeches, by writing them out in full, pruning, trimming, interpolating, abridging and lengthening them as the occasion demanded; nor would he appear in the forum undrilled for the emergency.

For this invariable habit he was sneered at by others of his contemporaries in advocacy, and it is Pytheas who is recorded to have said of him "that his arguments smelt of the lamp."

Demosthenes is accused of lacking in that element of fearlessness and contempt of danger which was regarded by the nation as an indispensable prerequisite to manliness, firmness and self-confidence; but by a determination to outgrow the defect, he cultivated a boldness of spirit and daring which changed his whole primitive nature.

His indefatigability was phenomenal; industry, persistent and continuous, was his watchword, without which he would have been kept down to the plane of the thousands of commonplace men of his day, and the pages of history would have been dumb as to the existence of such a Grecian.

HIS DEATH.

His death was by suicide, poison the means, but the manner in which he partook of it varies in detail, history according more than half a dozen ways.

After he was dead, the people of his native city honored his memory greatly by erecting a brass statue of him and decreeing certain privileges to his family.

His oratory was considered by the scholars of his time as superior to anything that had preceded it among the ancient nations, but his most carefully prepared efforts are characterized by an austerity that perhaps mars their beauty in a certain degree.

DEMOSTHENES—AN EXAMPLE.

To the young and aspiring advocate, the life of Demosthenes is an example of what earnest, honest work may effect, even when there are apparently insurmountable obstacles inherent in the individual such as Demosthenes had to contend with, but which he overcame by his determination that he would.

If his energy had failed him in the least degree during those trying moments, he would have drifted back into obscurity and been one of the commonest of individuals in the streets of Athens.

Yet that indomitable industry which is essential to the achievement of distinction in any of the vocations of life was the secret of his brilliant success, and without which no one, however great his natural genius, can ever hope to scale the ladder of fame.

Thus it appears that the era of advocacy began in Greece, after which Rome, the conqueror of the world, becomes the source of research for the further development of our subject.

In carefully studying the basis of the Roman system, it appears that written law very early entered into their jurisprudence as its foundation, if it was not absolutely the first employed.

After the somewhat mythical Romulus, Numa Pompilius became the sovereign, whose reign will be remembered by students for its mild, happy and peaceful administration.

His laws must have been exactly suitable to the ideas which the gentle monarch himself entertained in relation to government.

The form of administering the government during the regal period was similar to that of Greece, but originally instituted by Lycurgus, the Spartan; a Senate composed of the elders, and a popular assembly with power of voting, and the kings at the head of both.

DECEMVIRAL TABLES.

About the year 302 before Christ, a number of the most learned men of Rome, who had been sent to Greece and the Grecian settlements of southern

Italy for the purpose of studying the laws of that country and the collection of legal material and ideas from which to frame a code that had been under consideration, returned.

Appius Claudius was then made the president of a Commission, consisting of ten patricians, which commenced the serious work of reducing the laws to writing, and so diligent were the members that before the end of a year the largest and most important portion of the Code had been prepared, and it was immediately approved.

Then the text was either carved or painted on ten tables of wood, exposed to the public in the forum, and were called the "Decemviral Tables," from the number of men composing the Commission that compiled them and the number of wooden boards on which they were portrayed.

There were only ten of these Tables at first, but during the following year the Decemvirate Commission met again, and after working for a few months completed two more Tables, which contained the supplemental matter for the perfection of the Code, and then, too, it was given its legal title: "Lex XII Tabularum."

LEX TABULARUM.

In many particulars, the "Lex Tabularum" resembles the legislation invented by Solon, though

there was much that was entirely original, the greater portion, in fact; but even they were not a complete compendium of all the laws that entered into the Roman jurisprudence.

When Rome was sacked by the savage tribes from the North, it is alleged that the Twelve Tables were destroyed; but if this were the case, they were not lost to the world, for they were afterwards reproduced, so that there must have existed many copies of them in the country, which escaped the vandalism of the Goths.

It was a part of the curriculum of the schools that the children should learn them, so important was it considered that the laws of the country should be made familiar to every one.

Upon the appearance of the Tables, their proper interpretation became a matter of necessity; if, as was asserted, Solon wrote his laws in ambiguous language purposely to bring honor to his established courts, and that a portion of the Twelve Roman Tables were a literal transcript from his laws, no wonder that it became necessary for some one to be able to interpret them properly, according to their spirit.

And thus it was that lawyers, who were skilled, should be required to prepare a system of actions to which the contents of the Tables might be made applicable.

The Romans also copied the form of their law from Greece, and began to adopt their methods of

trying cases in the forum, with pleaders both for the prosecution and the defence.

GAIUS.

Gaius or Caius was one of their famous jurists, but the history of this evidently learned man in the Roman law is so wrapped up in mystery that nothing definite in relation to him can be gathered that is satisfactory, so far as his personal record is concerned.

Even the spelling of his name has been a fruitful source of discussion, but of this we have no concern. That he was the author of certain Institutes which were used as a text-book, there is no doubt, parts of which were taught in the lectures on law by the Roman professors, and which were also used as the basis of the famous Code of Justinian.

Caius was originally a clerk of one of the courts. Civil and criminal trials were in the hands of the patricians, who conducted them secretly. Caius, through his works on the subject, betrayed the laws and forms of procedure, and they became public.

CICERO.

Cicero, who became one of Rome's most celebrated advocates, was for a long time considered by the people as of very little account, and did not attempt to push himself forward until importuned

by his family; then he sprang full-fledged into the arena of advocacy, and became the leading orator at the Roman Forum.

Like Demosthenes, Cicero was defective in his speech, but he took lessons in elocution of Roscius and of Aesop, the tragedian, who succeeded in remedying his natural defects. Cicero's eloquence was of that persuasive character which is so potent before a jury.

He was likewise master of those most effective attributes—sarcasm, repartee, irony and invective—and in this particular was the Ingalls of the Roman Forum. Boisterousness in pleading he condemned strongly, saying that "those who shouted did so because they could not speak, like lame men who get on horseback because they cannot walk."

His greatest fault, and one from which we who read his orations are fortunately removed, was his inordinate vaunting of his own powers and ability; a fault that will not be condoned, no matter how brilliant the person may be who is guilty of it.

JUSTINIAN.

Justinian, who was ambitious to work a reform in the laws, appointed a Commission, whose duty it was to make a collection of all the statutes, which included the rescripts of the Gregorian and Hermogenian Codes.

It made its appearance in the spring of 509, A. D., and was quickly followed by his fifty decisions,

his digest of excerpts from the writings of the jurists and a revised edition of his Code.

In this latter he placed all of the legislation of his own, down to November 16th, A. D. 534. His death occurred about thirty-one years later, during which time a series of novels appeared principally written in the Greek language; but they were never codified, and many of them have disappeared.

Of Justinian's legislation, there were some four hundred *Constitutions,* which included his enactments and his novels.

All of his enactments were reformatory, and in length compared with a fair-sized English Parliamentary Act. They were very comprehensive, including everything secular, criminal, ecclesiastical, public, private and civil in the domain of law.

They are verbose, full of self praise and far from as pleasant to study as the cumbersome text-books of later times.

His Institutes were originally intended to be used in the schools as text-books, and it was declared that the Digest and the Code, together with the Institutes, should be taught as one masterpiece of legislation, all possessing equal authority, although the Digest and the Code were made up by many different persons, and they were ordered to be regarded as of the same authority as if they all had emanated from the brain of Justinian himself.

There was another interdiction in relation to this

remarkable work; inside of it everything of law was comprehended; outside of it everything was to be ignored; the books from which the compilation was made, the first Code, of which this was a revision, and the Fifty Decisions were forbidden to be looked into.

If a case came before the courts for which no precedent could be found in this revised work, it was submitted to the Emperor for his decision, as outside of the revised Code he was the only one who possessed the power of determining the law.

In making the transcripts of this Code, any one who attempted to use any of the conventional abbreviations of the age was subject to the same punishment as if he had committed forgery; this severe order was promulgated for the purpose of retaining the language in all of its originality and supposed purity.

Greek translations of the work were necessary, and were made, as the subjects of some of the island provinces understood no other language.

STUDY OF ROMAN LAW.

About the commencement of the twelfth century the study of Roman law began to attract the attention of legal students from every country where there was an advanced civilization, but the Church, as usual, through its ministers, ignored everything of the Justinian Code except those portions which elevated their religion; these were the articles on

the Trinity, the Holy Church and the novels, which dealt extensively in matters ecclesiastical, according with their own views. The Digest, however, was condemned as emanating from the brains of purely Pagan jurists.

Fortunately, one Irnerius, a scholar of Bologna, happening to get hold of a part of the Digest, was charmed with its beautiful reasoning, so diametrically opposed to the diction of the Code and the novels, where, as some one expressed it, there was a little wheat in an immense amount of chaff, but which, however, were more acceptable to the Church because of their ecclesiastical contents.

This Digest was divided by Irnerius and the teachers of his school, who were called "Glossarists," the name being derived from the "Glossæ," notes marginal and interlineal, with which they furninshed the matter to the students.

The supposition is that the Digest came into the possession of Irnerius in detached portions, which accounts for the erratic manner in which it appeared, and the curious name attached to it, by which it was known to the world for hundreds of years.

This school of Irnerius continued for over five centuries, when at the end of that time Roman jurisprudence received a fresh impetus, the history of which is intensely interesting, but this essay would be carried to an impossible limit, with the space available, if it attempted to record its vagaries and story.

GERMANY—ROMANS AND TEUTONS.

The earliest history concerning the tribes that inhabited central and western Europe came down to us from the Roman writers. There were hundreds of tribes dwelling in central Europe at the time of Rome's highest civilization, and the Roman generals, in their lust for glory and empire, by crossing the Alps, first came in contact with the Gauls, one of the Teutonic tribes.

The latter were a savage people in the nomadic stage, and were pressing westward. Their laws were purely customary, as laid down by their chief. To fight for a home and be able to protect themselves from their neighbors was their object in life.

A long struggle ensued between the Romans and the Teutonic tribes. Julius Cæsar played a great part in these wars, and he writes a full history of the different peoples, their habits and customs, in his "Gaulic Wars."

It is not our purpose to write a history of these nations, but it is important to know the origin of the great countries that are now in Europe.

THE FALL OF ROME.

The Romans, having conquered the country west of the Rhine, had quite enough to do to keep the fierce tribes on the eastern shore from encroaching on their territory.

It was during this Roman possession that the fierce and untamed Gaul assimilated much of the culture and refinement of the Romans, and finally accepted Christianity.

Rome, in the meantime, being attacked by the Goths, required its armies, stationed in Gaul, to return to defend the native land. The fall of Rome follows, and the Goths, a related nation of the Teutons, spread over southern Europe, inhabiting Greece, Turkey, Italy and Spain.

There is no vestige of this tribe at present, having been in turn conquered by the invincible Teutons, branches of whom now inhabit the whole of western Europe.

The Roman legions having departed, the Gauls begin their western march and endless strife follows. There is no law and order amongst these peope in this stage; they are looking for homes, and do not get a chance to settle down peacefully, a condition necessary to the enactment and carrying out of wise laws.

Each tribe that was able to hold its own finally finds a suitable location in regions between the North and Mediterranean Seas. Each has its King or Prince, who is known for his martial feats. Each tribe's business is fighting, for it never knows when it may be attacked by a neighbor.

Several tribes form leagues for better defence against a common enemy, and so we find a few con-

federacies among the Teutons, each under one King or Duke.

Occasionally one King is able to unite most of the different confederacies into an Empire, which is divided again in the reign of a weaker successor.

Church and State are one, but the former does not absolutely dominate the latter, as in eastern countries, for we read that Emperors make and unmake Popes, and defy the edicts of the Papal See. Feudalism with its baneful customs came into force. The masses had absolutely no rights.

But freedom was part of the primitive nature of this race, and among the Franks, several of the Teutonic tribes, there was finally a revolution, which overthrew the feudal system in France, and finally resulted in a republican form of government.

FEUDALISM PREVAILS.

Among the Teutonic tribes that settled in what is now Germany, it is true there was some semblance of a federated government.

The Dukes and Princes or their representatives came together and elected an Emperor, but his authority was only nominal, as States' rights prevailed, and there were continual disputes between the units of the Empire.

Laws were made and justice was dealt out by the lord of the land in an arbitrary manner, and his decisions were final.

THE NEW EMPIRE.

This lack of unity almost led to the destruction of the German Empire by Napoleon, and its later struggle with France.

It was then that Germans joined, and united they were invincible. By 1871 they learned that only in unity there is strength. The different States took counsel together and decided to choose the King of Prussia Emperor, and since then all the German Emperors have been the Prussian Kings.

Instead of there being many small principalities and dukedoms, which were continually fighting one another, there was now one uniform national government, with one set of laws for all States.

The government became more popular and the common people were given some voice in the affairs of the country. They have the right to life, liberty and property, and elect delegates to represent them in the law-making body.

Thus Germany has learned to solve a great problem. But one is still awaiting her, full of difficulty and menace. In order to protect Germany, its manhood has been organized into an army. Every able-bodied man is a soldier. He has to drill and serve for three years. Only those studying a learned profession are let off with one year's service.

All this may build up a disciplined, strong race of men, but the other side is dark. The cost of maintaining such an army is enormous, and the burden is on the common people. This and other kindred conditions are leading to a quiet revolution in Germany.

Let us hope that there will be no bloodshed.

RUSSIA.

Russia's development in its laws and government is similar to that of Germany, although not so far advanced. The feudal system is not quite done away with, but there is a strong centralized government, whose head is absolute in his power.

The Russians demand a constitutional government, and have been striving for that end for hundreds of years. We are interestedly watching developments in that country to-day on that point, and we hope that the Czar and his ministers see the justice of the people's claims.

ENGLISH LAW.

A complete history of the evolution of law is full of rich nutriment for the student, but in a review necessarily short as this must be only the main points are touched upon.

Coming now to the English period, whose sources of information are more easily accessible, we shall slight this portion of the subject.

The early history of England is one of continual strife, and not until the reign of Elizabeth did the kingdom assume a really peaceful status.

TEUTONIC TRIBES—ADVENT IN BRITAIN—ALFRED THE GREAT.

English law, which is the foundation of American law, was up to the time of King Alfred nothing more than the customs of the different tribes that inhabited England. In the year 449 A. D. the first party of Saxons settled in Britain. They came not to conquer, but to live there in peace.

Not long after came more Saxons, Engles, Jutes, and Celts from across the Baltic. These were a thrifty people, and they tilled the rich soil of England with a faith and vim that was strange to the savage Britain.

In a century the entire Eastern coast was dotted with the villages and homes of the foreigners. They had come to stay. Then the Dane, the sea wanderer, who had no patience to construct, but revelled in destruction, came and made havoc of the peaceful homes of the farmers.

They took what they wanted, destroyed the rest, and sailed away. This was repeated for many years. In the interest of common defence of life and property, the tribes that inhabited Britain, from being a dozen little kingdoms, combined and became one.

A King was chosen, a man with a strong arm and clear brain, who commanded respect by his appearance and deeds. He was an Engle, and his name was Egbert. Alfred was the grandson of Egbert. A few years before his birth, the Engles were converted into Christians, and the beautiful and pure doctrines of primitive Christianity now governed their actions. Alfred was sent to Rome to become a bishop of the Church. He returned a mild, gentle and civil young man.

ALFRED CHOSEN KING—A UNITED ENGLAND.

In the meantime the Danes were still marauding the British Coast, and the father and brothers of Alfred had fallen in battle while defending their homes. In their extremity the Anglo-Saxons turned to Alfred, the gentle and silent, and placed their hopes in him.

Through expert generalship he was able to finally defeat the Danes and make many prisoners, among whom was their King.

He converted them to Christianity, which broke the fierce spirit of the Dane, and peace followed. There was now a united Kingdom, and it was Alfred who formed Brittany into England. The English love of law and order dates from then.

ALFRED'S LAWS.

In Alfred's time the King's word was law, and it was he who proclaimed that a King was not divine, but merely human, and therefore a King's edicts should be endorsed by the people in Folk-moot, or general town-meeting.

This was the origin of popular government, and here is an instance where a great ruler voluntarily relinquished some of his power. History tells us that usually there had to be a revolution, forcing the King to renounce a part of his supposedly *divine right.* But Alfred was very close to the common people.

In his long struggles for home and freedom against the savage Dane, he had slept on the ground with his soldiers and tilled the soil with the farmers.

He set himself to educate the people. He predicted a time when all men would be able to read and write and take an active and personal part in the government.

JURY SYSTEM.

Alfred was the first man who introduced the jury system in England. It is claimed that he did not originate it, which is a fact. It goes back to the time when there was no law, when an entire village would turn loose on an offender and pull him limb from limb, a fact which led to a degree of delibera-

tion, and the case being handed over to a committee to investigate the deed and hand in their verdict.

"Lynch Law" typifies a primitive jury trial. The early Greeks had trials by jury, as in the case of Socrates. But the jury system in England dates back no further than Alfred's time. He had absolute power, and was the sole judge and ruler.

But on certain occasions he relinquished his power and said, "I do not feel able to try this man, for as I look into my heart I see that I am prejudiced. Neither will I name men to try him, for in their selection I might also be prejudiced.

"Therefore, let one hundred men be called, and from these let twelve be selected by lot, and they shall listen to the charges and weigh the defence, and their verdict shall be mine."

THE BARRISTER IN ALFRED'S TIME.

In the time of King Alfred the barrister was an employee of the court, and it was his business to get the facts and explain them to the King in the fewest words. If a barrister accepted a fee from a man suing for justice, he was disbarred.

Finally, however, the practice of feeing, in order to renew the zeal of the barrister, was tolerated, but clients had to slyly slip all gratuities, as they were called, into the pocket of the barrister.

The general practice of paying the barrister, instead of the court, was not adopted till several hun-

dred years later, and it was then regarded as an expeditious move to allay litigation and punish the client for not settling his own troubles.

At present, with our complex code and practice of the several courts, it is absolutely necessary to hire a lawyer to attend to the preliminaries and trial of a case.

Chief Justice Fuller has prophesied that there will come a day in America when damage cases will be heard by a tribunal without the help of lawyers. A man will file his claim of damages, and it will receive attention. He states that the acceptance of a case on a contingent fee will yet be a misdemeanor. Justice should be cheap and easy, instead of costly and complex.

PRESERVATION OF OLD CUSTOMS.

So are we imbued with old-time customs that many of them used in ancient times are in vogue to this day. Attorneys are still regarded as officers of the court, and we still use the word "Court," signifying a place where royalty dwells.

EDWARD I.

From the time of Edward I. Great Britain made rapid strides in her system of jurisprudence. The English people were pleased to call that monarch the Justinian of modern times, and Sir Matthew Hale affirms in his history of the Common Law:

"More was done in the first thirteen years of his reign to settle and establish the distribution of justice in the kingdom than all the years since that time put together."

HENRY II.—MAGNA CHARTA—JOHN I.

The reign of Henry II. was one of legislation. Feudalism was struck a deadening blow. Liberty was the keynote. There always was a council of lords and prelates to advise the King, but it was in this reign that the mass of people was represented in the House of Commons by those whom they chose.

The ancient right to speak for themselves was thus brought back to them, but they spoke through chosen representatives.

Henry the Second developed the jury system and established a Circuit of Kings' Judges, who travelled about the country and heard civil and criminal cases.

In the reign of John, the *Magna Charta* came into existence in the year 1215. This was an embodiment of the ancient customs of the Saxon tribes, and by it all classes had rights, and the King was a rebel if the laws of the Charta were not obeyed by him.

This was the culmination of the long struggle for rights, and Englishmen date the birth of their national freedom from the reign of John.

OLD ENGLISH LAW LIBRARY.

The most reliable information relative to the primitive constitution of the English people and the subsequent changes may be found in Stubb's Constitutional History of England.

In the time of the first Edward a complete law library embraced Bracton, Glanville and Fleta, and in his reign the Chief Justice of the Court of King's Bench, with a view to the establishment of a code of procedure in his court, as well as to expedite the trial of cases, published a collection of writs, which he thoroughly revised and designated "Registrum Brevium."

Later he composed an original work in Latin, which he divided into two volumes, known as "Hengham Magna" and "Hengham Parva."

They were quaint books, and serve as a curious contrast to those of this age of learning and wisdom in the domain of jurisprudence.

Notwithstanding all this, the crude instructions given to the then legal world in reference to the conduct of actions from their beginning to their ending, were received with delight, for the good Judge's learning was great and his wisdom profound.

Lyttleton's writings and Lord Coke's Commentaries on Lyttleton became the most celebrated ever composed on jurisprudence up to that date, and each contributed his store of knowledge to the un-

precedented advancement of science in the practice of law in the English forum.

BRACTON.

Lyttleton wrote in French, the prevalent court language of the third Edward's time, and Bracton, an ecclesiastic of Richard I.'s reign, wrote in Latin more puzzling in its construction and more difficult to translate than the French of Lyttleton.

It was Bracton who interpreted the "Magna Charta" as the spirit of the time and the people demanded it to be rendered.

By way of a reflection upon Bracton, Sir Henry Maine, an eminent classical authority, tells us that he [Bracton] "put off on his countrymen as a compendium of pure English law a treatise of which the entire form and a third of the contents were directly borrowed from the 'Corpus Juris,' and that he should have ventured on this experiment in a country where the systematic study of the Roman law was formally proscribed will always be among the most hopeless enigmas in the history of jurisprudence."

FEUDALISM.

Feudalism as a state of society and government played its part in the evolution of law among all the nations and still exists in a few countries today. It is interesting to a student of the present age, who looks back upon feudalism as an ancient

form of society, to watch the progress of a nation that has just emerged from a feudal state to modern ideas of society, government and law.

We refer to that country of the Far East, Japan, which is trying to educate its inhabitants according to Western principles as to law and government. Japan was in ancient times influenced by Confucianism, and, like China, was purely a feudal government.

JAPAN—PRIMITIVE IN MODERN TIMES.

One fact concerning feudalism is that it completely prevents any organized system of laws. The lord of the land was absolute, and the "Jus vitæ necisque," the right of life and death, was in his hands.

In Japan, even during the early part of the 19th century, civil and criminal trials were conducted privately, and the knowledge of the law and practice became secret in the hands of officials, just as in Rome it was in the hands of patricians, till Cæus Flavius, a clerk of court, betrayed the secret.

CRIMINAL TRIALS.

One remarkable rule in criminal cases was that there could be no conviction unless there was a voluntary confession by the accused.

But torture was permitted by the judge, and many an innocent person who could not bear the suffering confessed to a crime of which he was totally guiltless, while the hardy criminal very often escaped unpunished.

CIVIL CAUSES.

Civil causes underwent a preliminary examination as in Egypt, and the practice became technical and intricate to the utter bewilderment of those who were not in the secret. Judges would ask the parties to come to terms out of court.

REFORMS.

The judgments of the court were to be in writing, and the punishments in criminal cases were extremely cruel. But in 1868 there was a reform, and torture and severe punishments, except beheading, were abolished.

Between 1870-1878 there were more changes, and all capital punishment, except for high treason, murder and arson in its first degree, was prohibited. Civil and criminal codes were promulgated, according to Western ideas.

By virtue of these codes, appeals to higher courts are allowed on both questions of law and fact, which is not the case in England and America, where an appeal can only be sustained on a question of law, or of law and fact.

By 1891 the Codes were revised and completed. They do not provide for a jury system, which in England and America is considered to be one of the safeguards of liberty, on the ground that the people are not sufficiently educated, and a case can be heard and tried to better advantage to litigants by one man who is trained for the position.

The judges are appointed for life, and they need not necessarily be barristers. They are specially trained, as in Germany. They may be removed only by a Disciplinary Court, when proven guilty of gross misconduct in administering justice.

DOMESTIC RELATIONS.

The feudal system was entirely done away with, and there are now individual rights to property. But the law as to family relations was changed but slightly from the customs of ancient times.

These customs are too deeply rooted in the nature of the Japanese, and filial love and respect play a great part in the government of the Japanese, as they do in China.

Though I have said that by 1891 their Codes were completed, the thrifty Japanese feel that there is still room for improvement, and they are constantly straining to better all the departments of their Empire.

They are in the wake of the most advanced Western nation, and before long bid fair to be on an equal footing with them.

REVOLUTIONS.

In no country has a reform in the existing laws been brought about peacefully. It has been only by revolution that the people have been able to obtain their rights. Those nations that have had their struggles earlier in the history of the world are now far in advance in their administration of justice.

Other nations are struggling to-day for their rights, and the rest will have their day, even to the most savage and uncivilized. It is the same story repeated over and over again, and the country that does not acknowledge the rights of the masses perishes in time.

ROUSSEAU.

A study of the causes that led up to the French Revolution is interesting in connection with this point. Some people trace the revolution directly to Jean Jacques Rousseau. He is blamed by some and lauded by others.

In fact, a revolution is the effect of a long train of evils. Rousseau saw the evils and uncovered them to the public gaze. But he did not cause them.

FEUDALISM IN FRANCE.

In this time, the eighteenth century, there were in France more than a hundred offences punish-

able by death. Church dominated State, and all heretics were to be exterminated, as promised by the King in his coronation oath.

Secret arrest was very popular with high Church and State officials. A suspected man could be removed from friends and family, and he would disappear. It was useless to search or inquire, the inquirer might disappear in some mysterious way.

The masses had no rights. They had the privilege of living until there was an order that a man should die. The torture, in order to force confession from innocent persons, was in full swing. To doubt Scripture was treason against the State.

THE SOCIAL CONTRACT.

These and many other worse conditions prevailed. Rousseau laid them bare to the world, and especially to the downtrodden of France. He then wrote the "Social Contract," which embodied ideas entirely reformatory to the times.

The opening clause reads, "Man is born free, but is everywhere enslaved." Freedom, equality and fraternity is the burden of the book.

The argument of the "Social Contract" is that in all forms of government the people enter into a natural agreement with their prince or ruler, wherein they waive their right of freedom in consideration of his seeing that laws giving the greatest good to the greatest number shall be passed and enforced.

Every individual of the State signs the contract; should he breach it, all benefits shall be denied him. A prince who so forgets his duties as to neglect his office and work for private gain or the benefit of a few should be deposed. "The individual by giving himself up to all gives himself up to none; and there is no member from whom he does not require the same right as that which he gives up himself. He gains an equivalent for what he loses, and a still greater power to preserve what he has.

"Each of us puts his person and his power under the superior direction of the general will of all, and as a collective body receive each member into that body as an indivisible part of the whole." He also advocated religious tolerance, and absolute separation of State from Church.

EFFECT ON AMERICA.

Ideas such as these, brought to the foreground by the existing evils, wrought marvellous changes, and we can trace one of the causes of the American Revolution to the Social Contract. It was the first expression of liberty as we in America understand it to-day. Governments to-day are carried on by the people through their representatives, and all officials are the servants of the people.

The world is not at a standstill. We will not have another Dark Age, and there is room for

more improvement. The people have just obtained their freedom, and are just awakening to their rights and powers.

CHURCH AND STATE.

In every country whose history stretches back into the twilight of civilization the connection between its religion and its secular government is so interwoven that it would have been impossible for one to have existed without the other.

This idea obtains in all Oriental nations to-day; their people earnestly believe that without this concomitant of religion the State could not exist, and that it is of little importance whether the State perishes, if only its religion is preserved.

Church and State have ever been united in England, and remain so to-day, a relic of the barbaric idea.

THOMAS JEFFERSON.

Thomas Jefferson states that he traced the matter of the inclusion of the Mosaic law into the laws of Alfred the Great down to the time of Bracton, and even further into antiquity, and found that the words "Ancien Scripture" had been translated into "Holy Scripture"; the real meaning being "ancient writings."

Tracing it down through the law books, he finds where Sir Matthew Hale states that "Christianity

is parcel of the laws of England," and that Lord Mansfield had just decided that the "Essential principles of revealed religion are part of the Common Law," which carried the doctrine still further, and as Jefferson observes: "Leaving us to find out, at our peril, what in the opinion of the judge, and according to the measure of his foot or faith, are those essential principles of revealed religion obligatory on us as a part of the Common Law."

Jefferson had an aversion to being governed by the laws of Christianity, repugnant to the Common Law; and he significantly adds in his note-book where this record appears that because Christianity is true, it does not become a part of the Common Law; that the Newtonian law is true, but no part of the Common Law.

Perhaps since Jefferson no student in our country has penetrated so far in his research into the antiquity of the law, and while we might find those differing with our opinion, yet we think his example worthy the emulation, not only of students, but of any lawyer who has not done likewise.

UNITED STATES—RELIGIOUS TOLERANCE.

The great stumbling block or impediment obstructing the progress of law has been that the State has ever been subordinate to the Church.

When our government was formed, however, the State was absolved from the bondage of the Church,

and in a very short period, exceeding a single century by only a few years, the result has been a material prosperity, accumulated wealth and the education of the masses, unparalleled in the history of great States; here, too, woman has been exalted as in no other nation, raised to a pedestal from which she is admired and respected for her modesty in its broad sense, and consequently the children of these mothers, the autochthonous generations of America, are the most progressive of all the peoples of the world, endowed with a high moral organization, and true to all the obligations of a refined and cultured state of society.

In tracing the thread of the evolution of law through Egypt, Sparta, Greece, Rome and England to our own country, we have not elaborated on the corresponding advancement of the French, Spanish and German nations in the same domain, as they, too, gathered from the same fields, and it would be but a work of supererogation to cut any sheaves from there.

The law student of to-day, necessarily under the established curriculum, is familiar with those great expounders and expositors, Coke and Blackstone, who have thrown so much light on the history of the evolution of law, and whose wisdom and learning astound the legal world even to this day.

It would be a delightful task to follow the great advocates into the English forum, among them Burke and Erskine, renowned not only for the

splendor of their eloquence, but for their celebrated pleas in behalf of justice, and who, without question, transferred the storied laurels of utterance from Greece and Rome to their own brows—a monument to the grace and elegance of our language, which will last as long as words are spoken and enlightened man endures.

CONCLUSION.

Acknowledging, with a due sense of gratitude, our indebtedness to the common law of England for the basis of our own system of jurisprudence, brings us to the conclusion of this review, and leaves little to be added, save reference to such improvements as have been made through wise legislation dictated by the love of liberty and the spirit of patriotism, industry and virtue, enduing our forefathers and their descendants.

We have threaded our way through the evolution of law from man's primitive nature and estate, through the fanciful weavings of tradition and the weird stories of the priests of Memphis, through the dazzling and sublime idolatry of the Pagan world to the limbo of dead gods, and we witness the battle still raging.

We have stood upon the heights and viewed the civilization of ancient Egypt, and gazed upon the magnificence and scope of her ruins, have dwelt upon the arts and sciences, and the wisdom and

learning of Greece and Rome, who have left nothing to tell the story of their greatness but the ruins of their colossal buildings, the splendor of their grand palaces and the requiem of their historians.

We stand in awe of the existence of the Chinese Empire for more than four thousand years, and of Great Britain for more than twenty centuries, and join in her boast that her drum beats are heard around the world, and that the sun never sets on her dominions; but the new light of love and virtue, and faith and hope, simplifies the lesson of the tale of the Christ shedding the purple robes of paradise and coming down to the bleak coasts of mortality to give His blood for the salvation of the world, and, reflecting on all the past, we look upon our own wondrous age and our own great Republic, scarcely more than one century old, and find we have achieved much more than all of these; that we too have had our struggles and bitter trials, our triumphs, our glories and renown, one mighty war of brother against brother, shedding the blood of three hundred thousand men upon the red sands of battlefields, but the cause of our strife was given unto the nurture and warmth of human hands and loved by human love, so that all bow with reverential solemnity as the graves of the fallen heroes of the North are laden with the roses and the lilies, and those of the South with the magnolia and the jessamine.

The same flag is the symbol of our glory, and the same flag the emblem of our power, and the same constitution guides our footsteps and enables us to direct with a firm and unerring hand the destiny of this great nation.

We, too, have had our heroes, in war, in statesmanship and martyrdom, who will ever be revered and venerated by all mankind, and though their lifeless tenements shall lie voiceless in the sepulchres of the dead for all the centuries to come, their memories shall live on so long as the hosts of heaven shall greet mortality on the shores of eternity.

May our laws still progress, tempered and exalted meanwhile with mercy and love, inspired by truth, virtue and a solicitude for our fellow creatures, and may obedience to them become more sacred and benign, and may we hope that the Power responsible for the existence of all things will reward our patient and honest endeavors to penetrate the darkness, to unveil the mysteries of life, and enable us, when it seems meet, to take that place in nature, hand in hand with nature's God, which is our rightful heritage.

FINIS.

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